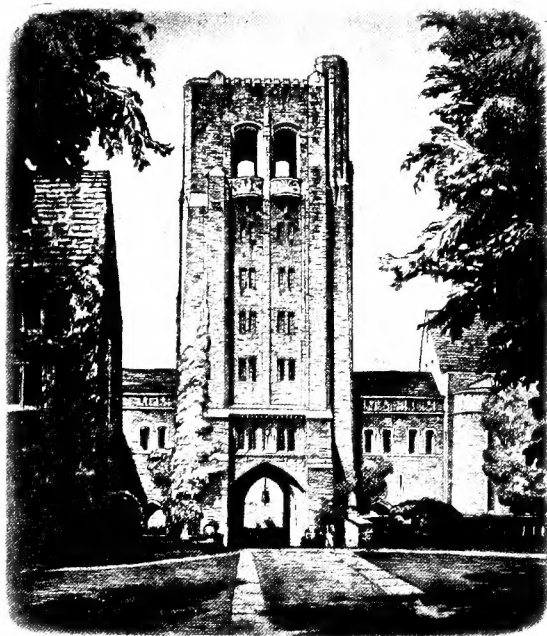


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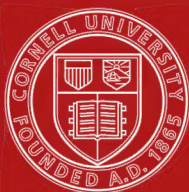
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A TREATISE
ON THE
POWERS AND DUTIES
OTHER THAN JUDICIAL
OF
TOWN AND COUNTY OFFICERS
IN THE
STATE OF NEW YORK,
CONTAINING COPIOUS REFERENCES TO THE STATUTES, AND THE
LEADING AND LATEST JUDICIAL DECISIONS;
WITH AN
APPENDIX OF PRECEDENTS
DESIGNED FOR
THE USE OF THOSE OFFICERS AND THE LEGAL PROFESSION.

BY AMOS G. HULL,
COUNSELLOR AT LAW.

ALBANY:
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A M O S G . H U L L ,

In the Clerk's office for the Northern District of New-York.

VAN BENTHUYSEN, PRINTER.

PREFACE.

The purpose of this work is to furnish to a large class of public officers in each town and county in the State of New-York, a concise epitome of their powers and duties (other than judicial), as the same are laid down in the voluminous and scattered statutory enactments, and numerous judicial decisions relating thereto. The spirit of recent legislation has contributed to produce a demand for such a work. Since the year 1845, very important changes have been made in the law affecting the local regulations of towns and counties.

The statute conferring legislative powers upon boards of supervisors, has devolved upon such bodies onerous duties and responsibilities. It was believed that a compilation of the statutes and decisions by which they are to be guided in the discharge of their duties, together with a plan or system of procedure, designed to facilitate their labors as a board, would be, if judiciously arranged, acceptable to the public.

Recent legislation has made important changes affecting the duties of assessors, commissioners of highways, superintendents of schools, county treasurers, and other town and county officers.

The laws prescribing the duties of many of these officers are spread through a large number of statutes; the decisions giving construction to those statutes occupy much space in the reports. These duties are frequently intricate and perplexing, depending upon the construction of statutes not always clearly drawn, and required to be discharged, many times at places, and under circumstances, where neither the statutes nor reports are accessible.

The idea of condensing the statutes relating to the duties of those officers, and at the same time noting all the decisions, giving construction to the same, and grouping the whole, as far as possible within the compass of one volume, with a view of giving each of those officers an opportunity to understand the duties of all the others, it is believed will commend itself to the good sense of every one. This will be the more readily appreciated, when we

reflect that many of these different officers are associated together in a variety of capacities, which seems to render it indispensably necessary that they should understand the duties of those with whom they are called to act.

The precedents have been inserted, not with a view of superceding that excellent book of forms, the Clerk's Assistant, but because it seemed necessary that each officer should find in the same volume that defines his duty, the forms to be used in the discharge of that duty.

A chapter has been prepared relating to taxes on lands of non-residents, necessarily brief. The law of 1855 has materially changed the proceedings in that regard. The duties of so many public officers are so much affected by that statute, that it has seemed necessary to insert the act entire.

The index to this volume has been made very full and complete. It has been prepared with great care by A. H. Sawyer, Esq.

In the preparation of the section relating to the mode of procedure of boards of supervisors, many valuable suggestions were made by G. A. Dayton, Esq., Clerk of the Board of Supervisors of the county of Oswego. Excellent suggestions have also been made as the work has progressed by Hon. E. Peshine Smith of Albany, Deputy Superintendent of Public Instruction, and D. H. Marsh, Esq., of Oswego, for all of which I beg leave to acknowledge my obligations.

It has been my aim to make the work acceptable to my professional brethren, as well as to public officers. Should it be so fortunate as to meet their approval, I shall feel abundantly rewarded. They are prepared to appreciate the difficulties attending the preparation of such a work.

The tendency of the age is to give importance to the town, the citizen, the man, in contradistinction to the absorbing and centralizing power of the State. That tendency is deemed salutary; and while it continues, it is believed that every effort which facilitates the labors of subordinate as well as superior officers in acquiring a knowledge of their duties and responsibilities, will be acceptable to the public.

A. G. HULL.

August 15, 1855.

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CHAPTER I.

OF THE SUPERVISOR.

SECTION 1. Who eligible.

2. How chosen or appointed.
3. Oath of office.
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SECTION 1. WHO ELIGIBLE.

No person is eligible to the office of supervisor, unless he be an elector of the town for which he is chosen ; nor can a supervisor, while holding that office, be appointed a commissioner of deeds, *see 1 R. S. 321, 4th ed.*, county treasurer, or superintendent of the poor, *see 2 R. S. 12, 4th ed.* Nor is any person holding the office of commissioner for loaning the moneys belonging to the United States, deposited with the State of New-York for safe keeping under the act passed April 4th, 1837, eligible to the office of supervisor ; nor is a supervisor eligible to the office of commissioner under that act, *see Laws of 1838, chap. 58, p. 34* ; nor can a town superintendent of common schools hold the office of supervisor.

SECTION 2. HOW CHOSEN OR APPOINTED.

He is chosen by the electors of the town, at the annual, or at a special town meeting, and forfeits to the town the sum of fifty dollars if he refuses to serve. *See 1 R. S. 656, 4th ed.*

If his name appears on the poll list, that is to be deemed a sufficient notice of his election; but if not, he is entitled to a notice of his election from the town clerk of the town, within ten days after the meeting at which he is chosen.

May be appointed.] The supervisor may also be appointed by three justices of the peace, in case the electors of the town do not, within fifteen days after a vacancy occurs in that office, supply the same by an election at a town meeting. 1 R. S. 657, 4th ed.

A vacancy is deemed to occur in that office whenever the town shall neglect at its annual town meeting to choose a supervisor, and also when he refuses to serve, or shall die, or resign, or remove out of the town, or become incapable of serving before the next annual town meeting after he shall have been chosen or appointed. In case of a tie vote for the office of supervisor at an annual town meeting, if the meeting should adjourn without electing one, and the justices should duly appoint, the appointee would hold the office and not one elected at a special town meeting. *The People v. Van Horne*, 18 Wend. 515.

SECTION 3. OATH OF OFFICE.

The next step after notice of his election or appointment, and within ten days thereafter, is to take the oath, denominated the constitutional oath. (*See Form, Appendix, No. 1.*) This oath must be taken before a justice of the peace, commissioner of deeds, county clerk, or some officer

authorised by law to administer oaths. The officer administering the oath must certify in writing the day and year when the same was taken, and deliver the same to the person by whom the oath was made. Such certificate must be filed within eight days thereafter with the town clerk. An omission to take and subscribe such oath and file such certificate within the times above mentioned, is deemed a refusal to serve.

SECTION 4. GENERAL DUTIES.

The following are the provisions of the Revised Statutes defining their duties. (These powers, however, have recently been very much enlarged, which will be fully mentioned in their appropriate place.)

To receive and disburse town moneys.] The supervisor of each town must receive and pay over all moneys raised therein for defraying town charges, except those raised for the support of highways and bridges, of common schools, and of the poor.

To sue for penalties.] He must prosecute in the name of his town, or otherwise, as may be necessary, for all penalties of fifty dollars or under, given by law to such town or for its use, and for which no other officer is specially directed to prosecute.

Must keep accounts.] He must keep a just and true account of the receipt and expenditure of all moneys which come into his hands by virtue of his office, in a book to be provided for that purpose, at the expense of the town, and to be delivered to his successor in office. (*Form of supervisor's book, Appendix, No. 2.*)

On the Tuesday preceding the annual town

meeting, he must account with the justices of the peace and town clerk of the town, for the disbursement of all moneys received by him.

At every such accounting, the justices and town clerk must enter a certificate in the supervisor's book of accounts, showing the state of his accounts at the date of the certificate. (*Form of certificate, Appendix, No. 3.*)

To attend board of supervisors.] The supervisor of each town must attend the annual meeting of the board of supervisors of the county, and every adjourned or special meeting of such board, of which he has notice.

He must receive all accounts which may be presented to him against the town, and lay them before the board of supervisors, at their next meeting.

He must also lay before the board of supervisors such copies of entries concerning moneys voted to be raised in his town, as shall be delivered to him by the town clerk.

To cause surveys to be made.] Whenever the supervisor of any town is required by the state engineer and surveyor to cause a survey to be made of the bounds of his town, it becomes the duty of such supervisor, within sixty days thereafter, to cause such survey to be made, and to transmit by mail, or otherwise, a map and description thereof to such officer. The expense of such survey and map must be defrayed by the several towns whose bounds either wholly or in part shall be described thereby: such expense to be apportioned by the board of supervisors of the county.

Penalty for neglect.] If any supervisor refuses or neglects to perform the duties last above enjoined, he forfeits the sum of fifty dollars.

In addition to the powers and duties above mentioned, it is made the duty of the supervisor, whenever it shall be deemed necessary by the assessors of any town to have an actual survey made, to ascertain the quantity of any lot or tract of non-resident lands which is divided by the town line, to cause the necessary surveys to be made at the expense of the town. 1 R. S. 718, 4th ed.

In all proceedings against towns by name, the first process, and all other proceedings requiring to be served, must be served upon the supervisor. It is also his duty to attend to the defence of the same, and lay before the electors of the town, at the first succeeding town meeting, a full statement of such proceedings. 1 R. S. 665, 4th ed.

May appoint firemen.] The supervisor, together with the justices of the peace, may appoint, in writing, firemen, not exceeding twenty to each fire engine, in towns as distinguished from incorporated villages. 1 R. S. 666, 4th ed.

Surplus moneys.] Whenever there are surplus moneys, made by the sale of property distrained upon by a collector for the non-payment of taxes, and a controversy arises between the person for whose tax the property was sold, and a person claiming the surplus on the ground that the property sold belonged to him, it is made the duty of the supervisor to receive and retain such surplus moneys until the rights of the claimants can be determined by law. 1 R. S. 724, 4th ed.

Overseers' lists.] The supervisor is also required to receive the lists of the overseers of highways when prepared and presented according to the statute, and to lay the same before the board of supervisors of the county. 1 R. S. 1038, 4th ed.

Bridges.] It is made the duty of the supervisor, to lay before the board of supervisors an estimate of the improvements to be made on roads and bridges, as the same is furnished to him by the highway commissioner. 1 R. S. 1030, 4th ed.

To report paupers.] It is made the duty of the supervisor of every town, in those counties where all the poor are not a county charge, to report to the clerk of the board of supervisors, within fifteen days after the accounts of the overseers of the poor have been settled by the board of town auditors, in each year, an abstract of all such accounts for the preceding year; which accounts must exhibit the number of paupers that have been relieved or supported in such town the preceding year, specifying the number of town and county paupers, the whole expense of such support, the allowance made to overseers, justices, constables, or other officers, and any other items which shall not comprise any part of the actual expense of maintaining the paupers. This report should be made by the supervisor in office at the time the accounts are audited. Should he omit to do it, then the report should be made by his successor. Any supervisor who neglects or refuses to make such report or abstract, or who makes a false report in relation thereto, forfeits the penalty of one hun-

dred dollars. 2 R. S. 25, 4th ed. (*Form of report, Appendix, No. 5.*)

Fire in woods.] It is made the duty of the supervisor, whenever the woods in any town shall be on fire, to order such and so many of the inhabitants of such town liable to work on the highways, and residing in the vicinity of the place where such fire may be, as he shall deem necessary, to repair to the place where such fire shall prevail, and there to assist in extinguishing the same, or in stopping its progress. 2 R. S. 107, 4th ed.

Strays.] He is also to receive any residuary moneys that may be in the hands of persons who may have sold strays according to law; and in case such persons withhold such moneys, he is under obligation to prosecute for the same. 1 R. S. 661, 4th ed.

Judgments against towns.] If judgment be rendered for any debt against any town, or the supervisor thereof, and is not suspended by writ of error or otherwise, or is not paid and satisfied before the next annual meeting of the board of supervisors of the county, a certified copy of the docket of such judgment or the record thereof, must be laid before the board of supervisors of the county, at some annual meeting thereof.

To pay judgment when in funds.] If the supervisor, against whom any judgment shall have been rendered which shall not have been suspended by writ of error or otherwise, have sufficient moneys in his hands belonging to the town, not specially appropriated, it is his duty to pay the amount of

such judgment and interest, upon the production of a certified copy of the docket, or record, to the party in whose favor such judgment was rendered, or his representatives. 2 *R. S.* 716, 4th ed. If the supervisor omits thus to pay such judgment, he is personally responsible.

One of the town auditors.] The supervisor, together with the town clerk and justices of the peace or any two of the justices, constitute the board of town auditors for the purpose of auditing and allowing town accounts; and it is his duty to meet with said board for the purpose of auditing such accounts, at the place of holding the last town meeting in his town, on the last Thursday preceding the annual meeting of the board of supervisors of the county. *Laws of 1840, chap. 305, p. 251. Vide also Laws of 1844, chap. 228.*

As a member of such board he must assist in making a brief abstract of the names of all persons who have presented to said board accounts to be audited, the amount claimed by each of said persons, and the amounts finally audited by them, which abstract is to be delivered to the clerk of the board of supervisors. *Laws of 1847, chap. 455, § 24.*

The supervisor has the right to administer oaths to persons presenting claims before such board.

Town houses.] Wherever the electors of a town have constructed a town house, the supervisor, together with the town clerk and the justice residing nearest to such town house, have the control of the same. *See Laws of 1847, chap. 197, § 3.*

When to prosecute town superintendent.] Upon notice

being given to the supervisor by the superintendent of public instruction, or by the county treasurer, that the share of school moneys apportioned to any town has been lost to the town by the neglect of its town superintendent, it is made the duty of such supervisor to prosecute in the name of the town, without delay, the defaulting superintendent and his sureties, for such moneys, and when recovered, to distribute the same among the several districts entitled thereto. *Laws of 1847, chap. 480, sec. 22 and 24. Fuller v. Fullerton, 14 Barb. 95.*

To prosecute trustees.] By the 145th section of the same act, it is made the duty of the supervisor whenever town superintendents, trustees, collectors or clerks of school districts shall refuse or wilfully neglect to perform any duty enjoined upon them by law, for the omission of which a penalty is given, to prosecute for such penalty, and when such penalty is collected the proceeds of the same are to be applied for the benefit of the town or district to which such penalty belongs.

Security from superintendents.] By the provisions of an act passed in 1850, it is made the duty of the supervisor, whenever in his opinion the security given by the superintendent of common schools of his town, is not sufficient for the full protection of the public against the loss of the school money which is likely to be entrusted to such superintendent, to require such further security, as in his opinion shall be deemed proper. *Laws of 1850, chap. 184, p. 345. (Form of notice requiring further security, Appendix, No. 6.)*

To appoint sealer of weights and measures.] The duty of appointing a town sealer of weights and measures, is now devolved on the supervisor and justices. *Laws of 1851, chap. 134, p. 251.*

Rejected taxes.] “Whenever the comptroller shall have rejected any tax in the first instance, or have charged the same to a county to which it should have been credited, on account of any inaccurate or imperfect description of the lands on which such tax was laid, the supervisor of the town in which such lands are situated, shall, if in his power, add to the next assessment roll of such town an accurate description of such lands, and if necessary may cause the survey of such lands at the expense of the town; and the board of supervisors shall charge them with the taxes and interest in arrear, stating the tax of each year separately, and shall direct the collection thereof; and such taxes and interest shall for all the purposes of this act be considered as the taxes of the year in which the descriptions shall be perfected.” *Sec. 19, chap. 298, Laws 1850.* If the supervisor omits to add an accurate description of such lands to the assessment roll of his town, the board of supervisors must cause such arrears of taxes and interest to be levied on the valuations of the estates, real and personal, of such town, as appearing by such assessment roll, and direct the same to be collected with the other taxes of the same year. *Laws of 1855, chap. 427, p. 785.*

Jury lists.] The supervisor, together with the town clerk and assessors, must meet on the first Monday of July in each third year, in such place

in their respective towns as the supervisor, or, in his absence, the town clerk, may appoint, for the purpose of making a list of persons to serve as jurors. When assembled, they proceed to select from the names of those assessed on the last assessment rolls of the town, suitable persons to serve as jurors. They must select male inhabitants of the town, who are not exempt from jury service, between the ages of twenty-one and sixty years, who are assessed of personal property in their own right, to the amount of two hundred and fifty dollars, or a free hold estate in the county, in their own right, or the right of their wives, to the value of one hundred and fifty dollars, who are also in the possession of their natural faculties, and not infirm or decipit, and who are free from all legal exceptions, of fair character, of approved integrity, of sound judgment, and well informed. (*Form of list, Appendix, No. 7.*)

File duplicates.] Duplicates of these lists must be filed within ten days; one in the office of the county clerk, and the other with the town clerk. Exceptions are made in respect to some of the above qualifications in the counties of Niagara, Erie, Chautauque, Cattaraugus, Allegany, Genesee, Orleans, Monroe, Livingston, Jefferson, Lewis, St. Lawrence, New-York, and Steuben. 2 R. S. 656, 4th ed.

Grand juries.] The supervisor must each year select a number of names of persons to serve as grand jurors, from his town. He must select, at least a number sufficient when added to those selected by the supervisors of the several other towns,

to make three hundred in all; that being the number required to be embraced in the list to be prepared by the board of supervisors.

In making this selection, the supervisor is required to observe the same rules in regard to the property qualifications, and character and standing, that appertain to the selection of petit jurors. Above all other considerations, they must be persons of approved integrity, fair character, sound judgment and well informed. 2 R. S. 905, 4th ed. (*Form of list, Appendix, No. 8.*) Care should be observed in making this list to give the full name.

In 1842, a law was passed, providing for the formation of election districts, and providing also, that notices of the time and place of holding elections in such districts, should be given by the supervisor, assessors, and town clerk, on the first Monday of October in each year, by posting the same in eight public places in town. Authority is also conferred upon those officers, to form new election districts, and divide new towns into election districts. For the proceedings under that statute, *vide* 1 R. S. 341, 4th ed. (*Forms under this act, Appendix, Nos. 9, 10, 11, 12, 13.*)

Under the law passed in 1855, entitled "an act for the prevention of intemperance, pauperism and crime," it is the duty of the supervisor, whenever he knows or is informed that any offence has been committed under any provision of that act, to make complaint and prosecute such complaint, in the name of the people. *Laws of 1855, chap. 231, sec. 14, pag. 351.* It is recommended, that the supervisor, before he leaves home, to attend the

annual meeting of the board of supervisors, should carefully copy his roll, and compare the same with the original. He should also ascertain the number of acres of resident and non-resident land, and the valuation, to the end that he may be able to detect any error, that may be committed by the board, in footing the same and fixing the aggregate valuation, and thereby save his town or ward from unjust taxation.

CHAPTER II.

OF THE BOARD OF SUPERVISORS.

SECTION 1. Their powers, duties and liabilities.

2. Duties of their clerk.

3. Mode of procedure as a board.

SECTION 1. THEIR POWERS, DUTIES AND LIABILITIES.

Annual meeting.] The supervisors of the several cities and towns, are required to meet annually in their respective counties, for the transaction of business as a board of supervisors.

They have the right as such board to fix the time and place of the annual meeting. *Laws of 1849, chap. 194, p. 294. 1 R. S. 675, 4th ed.*

The time of meeting was formerly prescribed by the Legislature. The time now usually fixed, is immediately after, or at the meeting of the board of county canvassers. The board of county canvassers (hereinafter defined) are required to meet in every county of the State, except Hamilton, on the Tuesday next following the general November election.

Make orders as to corporate property.] The board of supervisors of each county in this State, have power at their annual meeting, or at any other meeting :

1. To make such orders concerning the corporate property of the county, as they may deem expedient.

To audit accounts and levy taxes.] 2. To examine, settle, and allow all accounts chargeable against such county; and to direct the raising of such sums as may be necessary to defray the same.

3. To audit the accounts of town officers and other persons, against their respective towns; and to direct the raising of such sums as may be necessary to defray the same. And,

4. To perform all other duties which may be enjoined on them by any law of this State.

Majority constitute a quorum.] A majority of the supervisors of any county constitute a quorum for the transaction of business; and all questions which may arise at their meetings, must be determined by the votes of the majority of the supervisors present.

The boards of supervisors must sit with open doors, and all persons may attend their meetings.

Chairman.] They must, at each annual meeting, choose one of their number as chairman, who must preside at such meeting, and in all other meetings held during the year. In case of his absence at any meeting, the members present must choose one of their number as a temporary chairman.

Every chairman has power to administer an

oath to any person, concerning any matters submitted to the board, or connected with their powers and duties.

Clerk.] Each board of supervisors, as often as may be necessary, must appoint some proper person to be their clerk, who holds his office during their pleasure.

Court house and jail.] It shall be the duty of the several boards of supervisors as often as shall be necessary, to cause the court house and jail of their respective counties, to be duly repaired, at the expense of such counties.

Compensation.] Each member of the board of supervisors is allowed as compensation, for his services and expenses in attending the meetings of the board, at the rate of two dollars per day. (They are now allowed travel fees and fees for copies of papers, in addition to the per diem.) See *Laws of 1849, chap. 194.*

Penalty for neglect of duty.] If any supervisor refuses or neglects to perform any of the duties which are or shall be required of him by law, as a member of the board of supervisors, he, for every such offence, forfeits the sum of two hundred and fifty dollars.

Mayor, aldermen, &c., of New-York, ex-officio supervisors.] The mayor, recorder and aldermen of the city of New-York, are the supervisors of the city and county of New-York; and all the provisions of the Revised Statutes must be construed to extend to them respectively, except where special provisions inconsistent therewith, are or shall be

made by law, in relation to the city and county of New-York.

Pay of jurors.] It is made the duty of the boards of supervisors of the respective counties, to provide for the payment of the per diem allowance, and the travel fees of grand and petit jurors who may be required to attend the courts of record within their counties. Such jurors are allowed a sum not exceeding one dollar per day, and travel fees in going and returning, not exceeding three cents per mile. 2 R. S. 643 ; 4th ed., vol. 2, 832.

Bound to allow salaries to officers.] In providing for the payment of the salaries of officers when the salary is fixed by law, a member of the board has no discretion to vote against allowing the payment of the salary, as it becomes due, and if he does so, he subjects himself to the payment of the penalty denounced by the Revised Statutes (\$250,) against any supervisor who shall neglect or refuse to perform any of the duties which are required of him by law as a member of the board, whatever may have been the motive which influenced his vote. *Morris v. The People*, 3 Denio, 381. And so with regard to the amount certified to them by the town auditors, their certificate is conclusive, and the supervisors are bound to levy the sums audited by them. *People v. Supervisors of Queens county*, 1 Hill, 195.

Actions.] Actions may be brought by the board of supervisors of a county, and by the supervisors of towns, to enforce any liability, or any duty enjoined by law to them or the body they represent; and to recover any penalty or forfeiture given to

them or the body they represent; and to recover damages for any injuries done to the property or rights of the bodies they represent, such actions may be brought by them notwithstanding the contract or obligation on which the same is founded may have been made with their predecessors in office, and notwithstanding the right of action may have accrued previous to the time when they entered upon the duties of their office. 7 *Wend.* 181. 1 *Cowen*, 670. 2 *Wend.* 109. 2 *R. S.* 473, 4th ed. 715. But in actions against them, they are not liable to arrest unless for some personal misconduct in office, or some personal liability assumed or incurred.

No suit commenced by or against the board of supervisors of the county, or the supervisor of a town, is abated by the death, removal, resignation, or expiration of the term of office for which such officer was elected.

To examine assessment rolls.] The board of supervisors of each county in this state, at their annual meeting, must examine the assessment rolls of the several towns in their county, for the purpose of ascertaining whether the valuations in one town or ward, bear a just relation to the valuations in all the towns and wards in the county; and they may increase or diminish the aggregate valuations of real estates, in any town or ward, by adding or deducting such sum upon the hundred as may, in their opinion, be necessary to produce a just relation between all the valuations of real estates in the county; but they can, in no instance, reduce

the aggregate valuations of all the towns and wards below the aggregate valuation thereof, as made by the assessors.

Lands of non-residents.] The board of supervisors must also make such alterations in the descriptions of the lands of non-residents, as may be necessary to render such descriptions conformable to the provisions of this chapter; and if such alterations cannot be made, they must expunge the descriptions of such lands, and the assessments thereon, from the assessment rolls.

Tax how set down.] They must also estimate and set down in the fifth column, to be prepared for that purpose, in the assessment rolls, opposite to the several sums set down as the valuations of real and personal estates, the respective sums in dollars and cents, rejecting the fractions of a cent, to be paid as a tax thereon.

They must also add up and set down the aggregate valuations of the real and personal estates in the several towns and wards, as corrected by them; and cause their clerk to transmit to the comptroller by mail, a certificate of such aggregate valuations, showing separately the aggregate amount of real and personal estate in each town or ward, as corrected by the board.

When to strike corporations out of assessment roll.] Under the 9th section of the fourth title of the article of the Revised Statutes relative to the assessment of taxes on incorporated companies, &c., the real as well as the personal estate of a corporation, is exempted from taxation; provided a satisfactory affidavit is presented to the board of supervisors of

the county in which such property is assessed, showing that such company is not in the receipt of any income or profits, either from its real or personal estate.

If such an affidavit is made, and filed with the clerk of the board of supervisors, within the time prescribed by the statute, it is the duty of such board to strike the name of the corporation out of the assessment roll.

But the board of supervisors should require the affidavit to be in such a form as to leave no doubt upon their minds, that the real as well as the personal estate of the corporation is wholly unproductive; so that it yields neither rents nor income which are received by the corporation or its agents.

1 *Barb. Chan. Rep.* 433.

Corrected assessment.] They must cause the corrected assessment roll of each town or ward, or a copy thereof, to be delivered to each of the supervisors of the several towns or wards, who must deliver the same to the clerk of their city or town to be kept by him for the use of such city or town.

The boards of supervisors of the several counties in this State, must cause the corrected assessment roll of each town or ward in their respective counties, or a fair copy thereof, to be delivered to the collector of such town or ward, on or before the fifteenth day of December, in each year.

Warrant to be annexed.] To each assessment roll, so delivered to a collector, a warrant, under the hands and seals of the board of supervisors, or of

a majority of them, must be annexed. (*Form and contents of warrant, Appendix, No. 14.*)

In all cases, the warrant must authorize the collector, in case any person named in the assessment roll shall refuse or neglect to pay his tax, to levy the same by distress and sale of the goods and chattels of such person; and it must require all payments therein specified, to be made by such collector, on or before the first day of February then next ensuing.

To send account to county treasurer.] As soon as the board of supervisors have sent or delivered the rolls, with such warrants annexed, to the collectors, they must transmit to the treasurer of the county an account thereof, stating the names of the several collectors, the amount of money they are respectively to collect, the purposes for which the same are to be collected, and the persons to whom, and the time when, the same are to be paid; and the county treasurers, on receiving such account, must charge to each collector, the sums to be collected by him.

Cities.] Whenever the laws respecting cities direct the monies assessed for any local purpose, to be paid to any person or officer, other than those named in the preceding section, the collector's warrant may be varied accordingly, so as to conform to such alteration. *See 1 R. S. 395-6, 4th ed. 722.*

Whenever any board of supervisors make out any tax list and warrant, they are required not to add thereto the fees of the collection, but such fees are to be collected as prescribed by sections 29 and 30 of the Laws of 1845, chap. 181, as follows:

For all sums paid within the thirty days after the collector gives notice of the time and place where he will receive voluntary payments of taxes, the collector is entitled to receive one per cent., and for those not paid within such thirty days five per cent. *See post, Chapter VI. Of the collector.*

To call meetings of the assessors and collectors.] In those cases where the comptroller notifies the board of supervisors of the imperfections in the returns, respecting non-resident lands, it becomes the duty of the board, to designate a time and place where the assessors and collector of the town from which such imperfect returns have been made, must meet to correct such returns. The board must give the assessors and collector notice of the time and place designated. 1 R. S. 420, 4th ed. 756.

Rejected tax.] Whenever the comptroller shall have rejected any tax in the first instance, or have charged the same to a county to which it shall have been before credited, on account of any inaccurate or imperfect description of the lands on which such tax was laid, the supervisor of the town in which such lands are situated, shall, if in his power, add to the next assessment roll of such town, an accurate description of such lands; and the board of supervisors must charge them with the taxes and interest in arrear, stating the tax of each year separately, and direct the collection thereof. And such taxes and interest must be considered as the taxes of the year in which the descriptions shall be perfected.

If an accurate description of such lands shall

not have been added by such supervisor, to the assessment roll of his town, the board of supervisors must cause such arrears of taxes, and the interest thereon, to be levied on the valuation of the estates, real and personal, of such town, as appearing by such assessment roll, and must direct the same to be collected with the other taxes of the same year.*

If the town in which such taxes were originally assessed, has been divided since such assessment, then such taxes and interest must be apportioned by the board of supervisors among the towns, included within the limits of such original towns, in such equitable manner as they may deem proper.

It is provided, that whenever it shall be made to appear to the comptroller, that any tax returned as unpaid, was, previously to such return, paid to the collector or county treasurer, the comptroller may cancel such tax on the books of his office ; and if the same shall have been also paid into the treasury, he may cause it to be repaid out of the treasury, to the person by whom such payment was made.

Whenever any tax is so cancelled by the comptroller, he must transmit an account thereof to the supervisors of the proper county, who are required to cause the amount of such tax, with the interest thereon, to be collected of the collector or county treasurer who made such erroneous returns, and to be paid into the treasury of this State. *See 1 R. S. 405-406. 732, 4th ed.*

* The law, in regard to taxes, has been materially altered by the Legislature of 1855. See Laws of 1855, chap. 427, p. 781 ; that act is inserted at the close of this volume.

To report defaulting assessors and clerks.] The boards of supervisors of the several counties, at every annual meeting, must transmit to the comptroller the names and places of abode of the town clerks and assessors, in their respective counties, who have wilfully refused or neglected to perform the duties required of them, under the law respecting taxes; and the comptroller thereupon gives notice to the district attornies of the proper counties, to the end that they may prosecute such delinquent town clerks and assessors, for the penalties incurred by them. 1 R. S. 419; p. 755, 4th ed.

To receive lists relating to highway labor.] It is the duty of the supervisors of the several towns, to receive the lists of the overseers of highways, when delivered pursuant to the statute relating to non-resident highway labor unpaid, and to lay the same before the board of supervisors of the county.

Execution not to issue against board.] When a judgment is recovered against the board of supervisors, no execution can be awarded or issued thereupon, unless the same shall be rendered for the costs of a suit commenced by them in their individual names. 2 R. S. 475; p. 716, 4th ed.

Equalization of assessments.] In regard to the equalization of assessments, the supreme court decided in the case of Van Rensselaer v. Whitbeck, 7 Barb. 133, that it was the duty of the board of supervisors to examine the assessment rolls returned to them, for the single purpose of ascertaining whether the valuations of real estate in one town or ward, bear a just relation to those in the other towns and wards in the county, and if they do not, the board

is authorized to change such valuation so as to produce such relation. Such board has also authority to make any alterations in the description of the lands of non-residents, so as to make such descriptions conformable to law. To these objects the power of review vested in the board is limited. The assessment rolls being returned to them, containing the names of the persons to be taxed, and the taxable property, and the assessors' valuation of such property, it is the duty of the supervisors after having examined and corrected the valuations, and the descriptions of the lands of non-residents, to proceed to annex the tax list. No mere irregularity in the proceedings of the assessors would justify the supervisors in omitting the discharge of this duty.

County charges as defined by statute.] The following are deemed county charges:

1. The compensation of the members of the board of supervisors, of their clerk, and of the county treasurer:
2. The fees of the district attorney, and all expenses necessarily incurred by him in criminal cases arising within the county:
3. The accounts of the criers of the several courts within the county, for their attendance in criminal cases:
4. The compensation of sheriffs for the commitment and discharge of prisoners on criminal process, within their respective counties:
5. The compensation allowed by law to constables for attending courts of record, and reasonable compensation to constables and other officers, for

executing process on persons charged with criminal offences; for services and expenses in conveying criminals to jail; for the service of subpoenas issued by any district attorney; and for other services in relation to criminal proceedings, for which no specific compensation is prescribed by law:

6. The expenses necessarily incurred in the support of persons charged with, or convicted of crimes, and committed therefor to the several jails of the county:

7. The sums required by law to be paid to prosecutors and witnesses in criminal cases:

8. The accounts of the coroners of the county, for such services as are not chargeable to the persons employing them:

9. The moneys necessarily expended by any county officer in executing the duties of his office, in cases in which no specific compensation for such services is provided by law:

10. The accounts of the county clerks, for services and expenses incurred under the sixth chapter of this act:

11. All charges and accounts for services rendered by any justice of the peace, under the laws for the relief and settlement of the poor of such county, and for their services in the examination of felons, not otherwise provided for by law:

12. The sums necessarily expended in each county, in the support of county poor houses, and of indigent persons whose support is chargeable to the county:

13. The sums required to pay the bounties allowed by law for the destruction of wolves and

other noxious animals, and chargeable to the county :

14. The sums necessarily expended in repairing the court houses and jails of the respective counties:

15. The contingent expenses necessarily incurred for the use and benefit of a county ; and,

16. Every other sum directed by law to be raised for any county purpose under the direction of a board of supervisors :

17. Accounts of sheriffs for paying the fees of clerks of counties for drawing grand juries, for attending the drawing of grand juries, and for summoning constables to attend courts, shall hereafter be presented to and audited by the boards of supervisors of the counties respectively in which such service shall be rendered, and such accounts shall not hereafter be chargeable to this state. 1 R. S. 385; 4th ed. 712.

County judges.] The salary of the county judge shall be paid by the county, and at the close of each quarter.

Surrogates.] Any separate officer elected to perform the duties of the office of surrogate, shall receive an annual salary, which shall be fixed by the board of supervisors, and paid at the close of each quarter by the county in which he shall be elected, and such salary shall not be increased or diminished during his continuance in office.

Officer discharging the duties of judge and surrogate.] All local officers elected in any county of this State, to discharge the duties of county judge and surrogate, and exercise such other powers in special cases as may be provided by law, shall, for

their services respectively, be paid by the county in which they shall be elected, such reasonable compensation as the board of supervisors of such county may deem proper to allow.

Fees to be charged by county officers.] All county officers whose compensation is regulated by this act, shall charge and receive from all persons, the same fees and perquisites for the performance of any official services performed by them, as might have been charged against any person or persons, by any officer or officers in this State, under any law in force on the thirty-first day of December, eighteen hundred and forty-six, for like official services; and shall also receive all such other fees and perquisites as may hereafter be imposed by law on any person for services rendered by any such officer in his official capacity. *Laws of 1847, chap. 277. 1 R. S. 4th ed., 712.*

When board may be sued.] It has been seen in the foregoing pages, that the board of supervisors have a right to sue, and are liable to be sued, it therefore becomes an interesting matter of inquiry to know for what they may be sued. Before we investigate that question, it may be well to allude to some general principles applicable to such bodies which have been settled by judicial decisions. They are a judicial body, constituted by law to decide in all matters of account between individuals and the public body composing the county which they represent. *Brady v. The Supervisors of New-York, 2 Sand. Rep., 472. Supervisors of Albany, 12 J. R. 414. Merritt v. Lawrence, 6 Hill, 244. Ex parte Lynch, 2 Hill, 45.* Like other judi-

cial bodies, they may be put in motion by mandamus, but in the exercise of their discretion, if they allow a part of a claim and reject a part, a *mandamus* even will not lie to compel the allowance of the rejected part. *The People v. Supervisors of Albany*, 12 J. R. 414. Sitting in the capacity of a board of arbitrators or judges, it is obvious that it would be inconsistent to sue them to recover a claim, the merits of which they alone have the right to pass upon. This discretionary or judicial power has relieved them from the burthen of a great variety of suits, which otherwise would no doubt be brought against them. It has been supposed by some, that the Revised Statutes gave scope enough to enable individuals to bring suits against the county for any claim, cause of action or controversy whatever, although the same may be an account which could be allowed as a county charge. But in the case above cited, from 2 Sanford, chief-justice Oakley remarks: That the statute in question was intended to provide a remedy against the county for such causes of action (and no other,) as could not be presented to, and examined and allowed by the board of supervisors as county charges. Of this class would be claims for malfeasance of county officers, and claims arising from costs for which the county may be liable. Suits may be brought against them to adjust such a controversy, or claim, or cause of action, as cannot be settled and adjusted on the application of the party, in the exercise of the ordinary powers of the board, and which is not a county charge until it passes into judgment.

County charges defined.] As to what is a county charge, the same judge remarks, that wherever services have been rendered which are beneficial to a county, and no specific compensation is provided for the same by law, they shall be deemed contingent charges against the county.

Bright v. Supervisors of Chenango, 18 J. R. 242. *Mallory v. Supervisors of Cortland*, 2 Cow. 583. *The People v. Supervisors of Albany*, 12 Wend. 257.

The doctrine which seems to be established in the case of *Brady v. The Supervisor of New York*, 2 Sandford S. C. Rep. 460, is this: That no action can be sustained against a board of supervisors for refusing to audit an account in any case.

Mandamus.] The only mode provided for putting in motion such a tribunal, is by writ of mandamus, and that will not be granted to compel or dictate what judgment or decision shall be given.

The following authorities decide when a mandamus will, and when it will not be granted :

The People v. Supervisors of Albany, 12 Wend. 227. *The People v. Supervisors of Columbia*, 10 id. 363. *The People v. the Mayor, &c., of New York*, 10 id. 393. *The People v. Supervisors of Dutchess*, 9 Wend. 508. *The People v. Supervisors of Westchester*, 12 Barb. 446. *The People v. Edmonds*, 15 Barb. 529. *Bright v. Supervisors of Chenango*, 18 J. R., 242. *Hull v. Supervisors of Oneida*, 19 J. R. 259. *The People v. Supervisors of Cayuga*, 2 Cow. 530. *The People v. Supervisors of New York*, 1 Hill, 362. *The People v. Supervisors of Ulster*, 3 Barb. 332. *The People v. Supervisors of St. Lawrence*, 5 Cow. 292.

A mandamus will not be granted to compel the reversal of a decision already made. Whenever an inferior tribunal is clothed with discretion, a superior cannot dictate how that discretion shall be exercised.

Elkins v. Atheran, 2 Denio, 191. *The People v. The Judges of Dutchess*, 20 Wend. 658. See also 12 J. R., 414. 19 J. R., 259. 1 Hill, 362, above cited.

But if inferior tribunals that have the power to act, refuse to entertain a question addressed to their discretion, in cases where the law enjoins them to do the act required, the court will grant a mandamus to compel obedience to the law, where no other remedy exists. 19 J. R., 259. 1 Hill, 50, above cited.

After the supervisors of a county have passed upon the account of a constable for the expense of removing paupers, and have allowed a part and disallowed a part, a peremptory mandamus directing them to audit and allow the account will not be granted on the ground of the improper rejection of a part of the account. 12 J. R., 414.

A mandamus will be granted to compel the board of supervisors of the county to allow the account of the clerk of the county, for advances made by him in purchasing books for records, etc., sending notices to judges, etc.; such services being required by law of the clerks of counties, and no specific compensation provided for them, are properly chargeable to the county, and should therefore be allowed and paid. 18 J. R., 242. See also *ex parte Lynch*, 2 Hill, 45.

And where a statute directs the supervisors of a county to levy and collect a certain amount of money as a county charge, a mandamus will be granted to compel them to do it. *The People v. Supervisors of Columbia*, 10 Wend. 363.

Charges of counsel defending poor persons charged with crime.] It has been decided by the courts in Iowa, *Hall v. Washington county*, 2 Greenes' Rep. 473, that a claim for services rendered by an attorney or counsellor in defending a person charged with crime, in obedience to the order of a court assigning counsel for such persons, is properly a county charge, and should be allowed by the board of supervisors.

In that case, chief justice Williams remarks, "that if attorneys as officers of the court, have obligations under which they must act professionally, they also have rights to which they are entitled, and which they justly claim in common with other men in the business of life." Among these rights, that of reasonable compensation for services rendered in their profession is justly to be considered."

Actions against counties in cases where they are allowed by, must be brought against the board of supervisors of the county. 2 R. S., 715, 4th ed.

Provide court rooms.] The board of supervisors must provide the general term of the supreme court, the circuit courts, the courts of oyer and terminer, special terms, county courts, and the superior court of the city of New York, with rooms, attendants, fuel, lights and stationery, suitable and

sufficient for the transaction of their business. If they neglect, the court may order the sheriff to do so, and the expense when certified by the court becomes a county charge. *Sections 28 and 51, Code of Procedure.*

Legislative powers.] Supervisors have now become to a certain extent legislators. The statute enacted under article third, section seventeen of the Constitution of 1846, conferring legislative powers upon boards of supervisors, has been found to be very convenient and valuable in its operation. As its convenience begins to be more understood, and the local benefits derived from its enactment more generally diffused, future legislation will no doubt further enlarge its scope.

The act of 1849, conferring legislative powers upon this board, is as follows:

Power to alter the bounds and to erect new towns and file map.] “§ 1. The boards of supervisors of the several counties in this State, the county of New-York excepted, at their annual meeting, shall have power within their respective counties, by a vote of two-thirds of all the members elected, to divide or alter in its bounds, any town, or erect a new town, but they shall not make any alterations that shall place parts of the same town in more than one assembly district; upon application to the board as hereinafter provided, of at least twelve freeholders of each of the towns to be affected by the division, and upon being furnished with a map and survey of all the towns to be affected showing the proposed alterations, and if the application be granted, a copy of said map with a certified state-

ment of the action of said board thereunto annexed, shall be filed in the office of the secretary of state, and it shall be the duty of the secretary to cause the same to be printed with the laws of the next legislature after such division takes place; and cause the same to be published in the same manner as other laws are published.

Notice to be posted and published.] § 2. Notice in writing of such intended application subscribed by not less than twelve freeholders of the town or towns to be affected, shall be posted in five of the most public places in each of the towns to be affected thereby for four weeks next previous to such application to the board of supervisors, and a copy of such notice shall also be published for at least six weeks successively immediately before the meeting of the board of supervisors, at which the application is to be made, in all the newspapers printed in the county, not exceeding three in number.

Name of new town to be designated and first meeting appointed.] § 3. Whenever the board of supervisors shall erect a new town in any county, they shall designate the name thereof, the time and place of holding the first annual town meeting therein, and three electors of such town whose duty it shall be to preside at such meeting, appoint a clerk, open and keep the polls, and exercise the same powers as justices of the peace when presiding at town meetings, and in case any of the said electors shall refuse or neglect to serve, the electors of the said town present at such meeting, shall have power to substitute some elector of said town, for each

one so refusing or neglecting to serve. Notice of the time and place of such town meeting signed by the chairman or clerk of the board of supervisors shall be posted in four of the most public places in said town, by the persons so designated to preside at such town meeting, at least fourteen days before holding the same. They shall also fix the place for holding the first town meeting in the town or towns from which such new town shall be taken. But nothing in this act shall affect the rights or abridge the term of office of any justice of the peace or other town officer in any such town, whose term of office has not expired.

§ 4. The said boards of supervisors shall have power and they are hereby authorised :

Lands may be bought to erect poor houses on.] 1. At any meeting thereof lawfully assembled, to purchase for the use of said county any real estate, necessary for the erection of buildings, and for the support of the poor of such county.

To erect court house, &c.] 2. To purchase any real estate necessary for a site for any court house, jail, clerk's or surrogate's office or other public county buildings in said county.

Sites to be fixed.] 3. To fix upon and determine the site of any such buildings, where they are not already located.

Sale of lands.] 4. To authorise the sale or leasing of any real estate, belonging to such county, and prescribe the mode in which any conveyance shall be made.

New sites.] 5. To remove or designate a new site

for any county buildings, when such removal shall not exceed one mile.

Erection of buildings.] 6. To cause to be erected necessary buildings for poor houses, jails, clerk's and surrogate's offices or other county buildings, and prescribe the manner of erecting the same.

Raising of money by tax.] 7. To cause to be raised by tax upon such county any sum of money to erect any of the buildings mentioned in this act, not exceeding the sum of five thousand dollars in any one year.

Borrowing money for county use.] 8. To borrow money for the use of such county, to be expended in the purchase of any real estate, or for the erection of any such buildings, and to provide for the payment thereof, with interest, by tax upon such county, within ten years from the date of such loan, in yearly instalments or otherwise.

For town use.] 9. To authorise any town in such county by a vote of such town to borrow any sum of money not exceeding four thousand dollars in one year, to build or repair any roads or bridges in such town, and prescribe the time for the payment of the same, which time shall be within ten years, and for assessing the principal and interest thereof upon such town.

Poor.] 10. To abolish or revive the distinction between the town and county poor of such county.

Annual meeting.] 11. To fix the time and place of holding their annual meetings.

Collection of taxes.] 12. To extend and determine by resolution at their annual meeting the time when each collector in said county shall make

return to the county treasurer ; but such time shall in no case extend beyond the first day of March then next.

Laws to destroy wild beasts, thistles, &c.] 13. To make such laws and regulations as they may deem necessary and provide for the enforcing of the same, for the destruction of wild beasts, thistles and other noxious weeds, to prevent the injury and destruction of sheep by dogs, and to levy and enforce the collection of any tax upon dogs, and to direct the application of such tax, and to provide for the protection of all kinds of game, of shell and other fish within the waters of their respective counties: and all laws of this state now existing in relation to preserving or destroying, killing and taking wild beasts or birds, fish, eels, and shell fish, are hereby repealed, such repeal to take effect on the first day of January, in the year eighteen hundred and fifty.

County officers to report.] 14. To require any county officer, or any officer whose salary is paid by the county to make a report under oath to them, on any subjects or matters connected with the duties of their offices: and the said officers are hereby required to make such report whenever called upon, by resolution of any such board; and if any such officer neglect or refuse to make such report, he shall be deemed guilty of a misdemeanor.

Powers in the 4th section, by what vote to be exercised.] § 5. None of the powers prescribed in the last section shall be exercised except by a vote of a majority of all the members elected in the county, nor shall such power be exercised under the fifth, tenth and thirteenth subdivisions of said section, without

a vote of two-thirds of all the members elected to such boards.

Location of public buildings may be changed.] § 6. The boards of supervisors shall also have power within their respective counties, to change the location of court houses, jails, clerks' offices, surrogates' and treasurers' offices, or other public buildings, when the distance shall not exceed one mile, upon notice having been given signed by at least twelve freeholders, for six successive weeks immediately before any meeting of such board, and specifying the new site, and published in some newspaper printed in the county, but the power granted in this section for the removal of public buildings where the distance exceeds one mile shall not be exercised unless at the next annual meeting after the publication of the aforesaid notice, a resolution shall be passed to change the site of the building or buildings, to the place mentioned in said notice, by a vote of two-thirds of all the members elected, and then only upon said resolution being published for at least six weeks successively in some newspaper printed in the county, immediately previous to the next annual meeting of the supervisors, when by a vote of two-thirds of all the members elected, the said resolution being again passed, shall go into effect.

Every resolution to be signed and recorded.] § 7. Every resolution of any board of supervisors passed in pursuance of the provisions of this act, shall be signed by the chairman and clerk of such board, and be recorded in the book of miscellaneous records of such county.

Securities to be given for loans.] § 9. When moneys are loaned by the comptroller to any county, the treasurer thereof shall execute his official bond for the payment thereof, and when loaned to any town, the supervisor thereof shall execute his official bond in like manner.

Allowance to supervisors for travel, &c.] § 10. Each supervisor shall receive over and above the per diem compensation now allowed by law, eight cents per mile for all necessary travel in the discharge of his official duties, and three cents for each name (for making a copy of the assessment roll of his town and making out the tax bill to be delivered to the collector,) for the first hundred names, two cents per name for the second hundred names, and one cent per name for each name over two hundred. But no per diem allowance shall be made to any supervisor while employed in making out such copy or tax.

Repeal.] § 11. Nothing in this act contained shall abridge the powers of any board of supervisors which they now possess, and which are not inconsistent with the provisions of this act, and all acts and parts of acts inconsistent with the provisions of this act are hereby repealed."

Special commissioners.] By a law of 1838, authority was conferred upon boards of supervisors, to appoint *special commissioners* to lay out public highways in those cases where the board is satisfied that the road is an important one, and the authority conferred upon commissioners of highways cannot or will not be exercised. But, by a provision made in 1848, this power cannot be exercised, unless the

applicant for the road proves to the board the service of notice in writing, on a commissioner of highways, in each town through and into which such highway is intended to be laid, six days previous to the application, specifying the object of the application and the names of the commissioners. *Laws of 1848, chap. 164. 1 R. S. 676, 4th ed.* They have the power to provide for the payment to such special commissioners for their time and expenses. *Id.*

To publish accounts.] By the laws of 1839, it is made the duty of the board of supervisors of each county in the State, to publish in one or more public newspapers in such county, the name of each individual who shall have had any account audited and allowed by said board, the amount claimed and the amount allowed, and also their proceedings upon the equalization of the assessment roll. *Laws of 1839, chap. 369.*

Blind.] The supervisors of any county from which pupils are sent to the "New-York Institution for the Blind," whose parents are unable to furnish them with suitable clothing, are required, while such pupils are under instruction, to raise a sum of money for the clothing of such pupils, not exceeding twenty dollars in any one year. *Laws of 1839, Chap. 200.* They are required to raise the same amount for deaf and dumb pupils. *Laws of 1838, chap. 244.*

It is also made the duty of the boards of supervisors, to allow reasonable compensation to clerks and sheriffs, for services under the act for procuring statistical information concerning con-

victs, passed April 26, 1839. *Laws of 1841, chap. 274.*

To provide for publishing local laws.] The board of supervisors in each county, are bound to provide for the publication of all general laws passed by the legislature, and also such local laws as are prescribed by chapter 280 of the laws of 1845; such publication to be in two newspapers, printed in each county, if there be as many. *Laws of 1845, chap. 280.*

Claims against school districts.] Whenever a claim shall be presented to the board of supervisors, growing out of a suit against school district officers, and the claimant shall have complied with the requirements of law, in regard to giving notice to his district, and in all other respects, it is in the discretion of the board to make an order that the district shall pay the claim. *Laws of 1847, chap. 172.*

To fix salary of county treasurer.] The board of supervisors are also required to fix the compensation to be paid to the county treasurer, in lieu of the fees formerly allowed. *Laws of 1846, chap. 189.*

May fill vacancies.] The board has the power also to appoint a county treasurer, whenever a vacancy occurs in that office; *Laws of 1848, chap. 136;* and also to fix the penalty of his bond. *Laws of 1850, chap. 346.*

To examine securities held by county treasurer.] It is also made their duty to examine into the situation of the securities and money in the hands of the county treasurers, and to ascertain whether such moneys are securely and safely kept, deposited or invested; and to see that such securities are adequate and safe. *Laws of 1848, chap. 277.*

To appoint time for holding town meetings.] They are also required to appoint the day for holding town meetings in the several towns. They are required to designate some day between the first day of February, and the first day of May, in each year. Every town in the county must hold its town meeting on the same day, and when fixed cannot be changed under three years from that time. *Laws of 1839, chap. 389.*

Plank and turnpike roads.] It is made their duty to appoint inspectors of turnpike roads, *Laws of 1848, chap. 45*, and inspectors of plank roads, *Laws of 1847, chap. 210*; also *Laws of 1849, chap. 250*; and to determine whether an application for the construction of a plank road shall be granted.

To separate the office of county judge and surrogate.] In all cases where any county in this state, except the city and county of New York, shall have a population exceeding forty thousand, the board of supervisors therein, at any meeting of such board, may by a resolution thereof, provide for the election of an officer other than a county judge, who shall perform the duties of the office of surrogate therein. *Laws of 1847, chap. 276, p. 306.*

Such board also has power to separate the office of surrogate from that of county judge, and to fix the salary for the respective offices of county judge, surrogate, special county judge, and local officer.

To pay for guarding jails.] Such board has the power under the act entitled "An act to enforce the laws and preserve order," passed April 15th, 1845, to cause to be levied and collected as other county charges are levied and collected, such

amount as shall have been audited by the comptroller, to defray the expense that may have been incurred in guarding and protecting jails.

Accounts for relief of poor in Livingston Co.] A law was passed in 1845, *see chap. 334, p. 384*, of the laws of that year, for the temporary relief of the poor of the county of Livingston; and in that and in all other counties where they avail themselves of the provisions of that act, it is made the duty of the board of supervisors, to cause to be levied the several claims by that act authorized upon the towns affected thereby. By the same act, it is made the duty of the board to examine and audit the accounts of the superintendents of the poor.

In case of vacancy may appoint superintendents of poor and county treasurer.] They have the power also to appoint superintendents of the poor and county treasurers in those cases where a vacancy occurs in those offices, but in no other case. *Laws of 1847, chap. 498, p. 740.* It is their duty also to fix the penalty of the bonds of the superintendents of the poor. *Laws of 1850, chap. 12, p. 16.*

To levy military tax.] The board of supervisors of each county in this State, at their annual meeting, must cause the military roll of every city, village, town or ward, to be compared with the assessment roll of the same city, village, town or ward, and all the names on the said military roll, liable to pay the said commutation of fifty cents, must be transferred to the corrected assessment roll of the same city, village, town or ward, and in a column, to be provided for that purpose, in the corrected assessment roll, must be set opposite the name of

every person so liable to pay such commutation, the sum of fifty cents; and if the person is assessed for real or personal property on such assessment roll, the said sum of fifty cents must be added to the other tax against the same person. *Laws of 1851, chap. 180, sect. 16, p. 341.*

Idle and truant children.] The board is required to provide for the clothing, support and instruction, of such idle and truant children, as are defined by the laws of 1853. *Laws of 1853, chap. 185, p. 358.*

Juvenile delinquents.] Whenever any juvenile delinquents are sent to the House of Refuge, under the provisions of the act establishing such a House in Western New-York, passed May 8th, 1846, from any county entitled to send delinquents to such House, the board of supervisors of each of said counties, at their annual meeting, are required to raise such a sum as shall, in their opinion, be sufficient to pay to the treasurer of such House of Refuge, fifty cents per week, for the support of every person sentenced in their county, to confinement therein. *Laws of 1846, chap. 143, p. 150; and amended by chap. 304, of Laws of 1850.*

Removing convicts.] They are also required to provide for the payment of the necessary expense of removing convicts, under seventeen years of age, from either of the State prisons to the House of Refuge. *Laws of 1847, and Laws of 1850, chap. 24, pag. 29.*

To tax rents.] In those counties where rents are reserved in leases in fee, or for one or more lives, or for a term of years, exceeding twenty-one years, the board of supervisors are required to assess the

taxes to be raised for county, town, and state purposes, upon the persons entitled to receive such rents, within the town or ward where the lands upon which such rents are reserved, are situated, in the same manner as they assess any personal estate of the inhabitants of such town. *See Laws of 1846, chap. 327, p. 466, entitled "An act to equalize taxation."*

Special meetings.] A majority of the board can compel a special meeting, by presenting a written request to that effect to the clerk of the board. *Laws of 1838, chap. 314, p. 314.*

Not to allow accounts to be withdrawn.] Whenever an account is presented to the board of supervisors, it becomes their duty to number the same, and cause to be entered in their minutes, the name of the person by whom presented, and the time of its presentation; and they are prohibited by statute, from allowing that account to be withdrawn from the custody of the board or their clerk, except to be used as evidence upon a judicial trial or proceeding, and, after being so used, it must be forthwith returned. *Laws of 1845, chap. 180, sect. 28.*

Unpaid taxes on lands of non-residents, how collected.] If the taxes on any farm or lot of land, assessed to a resident, are returned as unpaid, in consequence of such premises becoming vacant by the removal of the occupant, before the collection of the tax imposed thereon, or in default of goods and chattels of the occupant to satisfy such tax, the supervisor of the town in which such land was assessed, must add a description thereof to the assessment roll of the next year in the part appropriated to

taxes on lands of non-residents, and charge the same with the uncollected tax of the preceding year; and the same proceedings must be had thereon, in all respects, as if it were the land of a non-resident, and as if such tax had been laid in the year in which the description is so added; *sec. 5, chap. 298, Laws of 1850*. See further on this subject *Laws of 1855, p. 781*; that act is hereinafter inserted.

Losses by default of collector.] All losses sustained by the default of the collector of any town or ward, are chargeable on such town or ward. All losses sustained by the default of the treasurer of any county in the discharge of the duties imposed by this act, are chargeable on such county. And the several boards of supervisors must add such losses to the next year's taxes of such town or county. *Sec. 25, chap. 288, Laws of 1850*.

To furnish maps.] Whenever the comptroller, preparatory to a sale of lands for taxes, deems it necessary, in order to test the correctness of the descriptions thereof, he may apply to the board of supervisors of any county, for maps of any tracts of land charged with taxes, and returned from such county. And the board of supervisors to whom such application shall be made, must furnish such maps, at the expense of the county, if they can be procured, and if not, they must then furnish such descriptions of the lands, as they can obtain, with a statement of the quantity in each subdivision, if the same be divided. *Sec. 44, chap. 298, Laws of 1850*.

To appoint county sealer.] The board of supervisors

of each county are required at their annual meeting to appoint a county sealer of weights and measures, who holds his office during the pleasure of the board.

The supervisors of each county must provide for procuring the proper standards of weights and measures for their respective counties, and for each of the towns therein; and all expenses directly incurred in furnishing the several cities, counties and towns with standards, or in comparing and adjusting those already in their possession, must be borne by the respective cities, counties and towns, for which such expense may have been incurred. *Laws of 1851, chap. 134, secs. 20 and 24.*

Fees in criminal proceedings, by whom paid.] All fees and accounts of magistrates and other officers for criminal proceedings, including cases of vagrancy, must be paid by the several towns or cities where the offence may have been committed, and all accounts rendered for such proceedings must state where such offence was committed, and the board of supervisors must assess such fees and accounts upon the several towns or cities designated by such accounts; but when any person is bound over to the oyer and terminer, or court of sessions, or committed to jail to await a trial in either of said courts, the costs of the proceedings had before the single magistrate, are chargeable upon the towns or cities as aforesaid, and the costs of the proceedings had after the person shall have been so bound over or committed, are chargeable to the county; but nothing herein contained applies to cases of felonies, nor where the proceedings or trial for the offence

is before any court of oyer and terminer or court of sessions of the county, and the fines imposed and collected in any such cases, must be credited to said towns or cities respectively. *Laws of 1847, chap. 455. 1 R. S. 681, 4th ed.*

Accounts how and when to be audited.] No account shall be audited by any board of supervisors, for any services or disbursements, unless such account is made out in items, and accompanied with an affidavit attached to, and to be filed with such account, made by the person presenting or claiming the same, that the items of such account are correct, and that the disbursements and services charged therein have been in fact made or rendered, or necessary to be made or rendered at that session of the board, and stating that no part thereof has been paid or satisfied. And the chairman of such board is authorized to administer any oath required under this section. The same rule applies in all respects to town auditors and superintendents of the poor. *Laws of 1847, chap. 490. 1 R. S. 680, 4th ed.*

The verification of such accounts is not to be construed to prevent the board from rejecting the whole of the claim, or any part, if they see fit. *Id.*

Bridges.] They have the power to cause to be levied, collected, and paid to the county treasurer, such sum of money as may be necessary to construct and repair the bridges in their county, and to prescribe the manner of expending such moneys, and to apportion the necessary tax for such purpose among the towns, in such manner as will be equitable.

To provide for building court houses, jails, &c.] They may cause to be levied and collected such moneys as they may deem necessary for rebuilding or repairing the court house or jail in their county, and for building, rebuilding or repairing, the clerk's office of their county, and they may prescribe the plan and dictate the manner of expending the money. 1 R. S. 676, 4th ed.

Highways.] They may cause to be collected in any town in their county, the sum of five hundred dollars, in addition to the sum ordinarily raised under the highway act to repair roads and bridges, provided a majority of the legal voters of the town, at a legal town meeting, have voted to raise that amount for such purpose.

Towns intending to apply to the board for the purpose of raising that sum, or less sum, for the above named purpose, must cause notice of such application to be published once in each week, for four successive weeks preceding the meeting of the board of supervisors, at which such application is to be made, in a newspaper in such county; but if no paper is printed in the county, then in some newspaper nearest to such county. 1 R. S. 676, 4th ed.

They have no authority to raise money for this purpose, unless it should appear that a written notice of the application to the town meeting, in the town where the money is to be raised, had been posted on the door of the house where the town meeting is to be held, and also at three public places in such town, for two weeks before the town meeting; and also that such notice was openly

read to the electors present, immediately after the opening of the meeting; and also that such notice stated the object of the application. *Id.*

For special provisions in regard to accounts to be presented to the board in the county of Rensselaer, *vide Laws of 1848, chap. 55. 1 R. S. 682, 4th ed.*

Accounts with county treasurer under poor laws.] In those counties where the respective towns are required to support their own poor, the county treasurers thereof, must respectively open and keep an account with each town, in which the town must be credited with all moneys received from the same or from its officers, and charged with the moneys paid for the support of the poor chargeable to such town. And if there be a county poor house or other place provided in such county for the reception of the poor, the superintendents of the poor of the county are required, in each year, before the annual meeting of the board of supervisors of such county, to furnish to the county treasurer a statement of the sums charged by them, as hereinafter directed, to the several towns for the support of their poor, which must be charged to such towns respectively, by the county treasurer, in his accounts.

Accounts by superintendents.] In those counties in which a poor house is established, or a place provided by the superintendents, for the reception of the poor, and in which the several towns are liable for the support of their poor respectively, it is the duty of the superintendents, annually, and during the week preceding the annual meeting of the board of supervisors, to make out a statement of all the

expenses incurred by them the preceding year, and of the moneys received, and exhibiting the deficiency, if any, in the funds provided for the defraying such expenses; and they must apportion the deficiency among the several towns, in proportion to the number and expenses of the paupers belonging to such towns, respectively, who shall have been provided for by the superintendents, and charge the towns with such proportions; which statement must be by them delivered to the county treasurer, as before directed.

To be laid before supervisors.] At the annual meeting of the board of supervisors, the county treasurer must lay before them the account so kept by him, and if it appears that there is a balance against any town, the board must add the same to the amount of taxes to be levied and collected upon such town, with the other contingent expenses thereof, together with such sum for interest, at the rate of seven dollars on the hundred, as will reimburse and satisfy any advances that may be made, or that may have been made, from the county treasury, for such town; which moneys, when collected, must be paid to the county treasurer.

Expense of supporting county poor, how defrayed.] The superintendents of the poor in each county, must annually present to the board of supervisors, at their annual meeting, an estimate of the sum, which in their opinion, will be necessary, during the ensuing year, for the support of the county poor; and the said supervisors must cause such sum as they may deem necessary for that purpose, to be assessed, levied and collected in the same

manner as the other contingent expenses of the county, to be paid to the county treasurer, and to be by him kept as a separate fund, distinct from the other funds of the county. 2 R. S. 20, 4th ed.

Board of county canvassers.] The board of county canvassers consists of the persons to whom the inspectors of election are required by law to deliver the original statements of votes given at elections in the several election districts.

The law provides that such statements must be delivered to the supervisor of the town, and if there be no supervisor in the town, or if he be disabled from attending the board of county canvassers, then such statements must be given to one of the assessors of the town or ward in which such election was held.

Hence the board of county canvassers ordinarily consists of the board of supervisors, although it frequently happens that assessors, for the reason above stated, are associated with supervisors; and in such case the board consists of such supervisors and assessors, as lawfully receive from the inspectors of election the original statement of votes cast at a regular election. (See further on this subject chapter entitled, "Board of County Canvassers.")

Board to assess school tax.] The state superintendent of public instruction, is required to certify to the county clerk of each county, before the 10th day of July, in each year, the amount to be raised by tax in his county; and the county clerks are required to deliver to the board of supervisors of their respective counties, a copy of such certificate, on the first day of the annual meeting of the

board. The board is required to assess such amount upon the real and personal estate of such county, in the same manner as is provided for the assessment and collection of taxes. *Laws of 1851, chap. 151. 1 R. S. 880, 4th ed.*

Lists of grand jurors.] The supervisors of the several counties, except the city and county of New-York, at their annual meetings in each year, must prepare a list of the names of three hundred persons, to serve as grand jurors at the courts of oyer and terminer, and courts of sessions, to be held in their respective counties during the then ensuing year, and until new lists shall be returned.

Same in New-York.] The mayor, recorder and aldermen of the city of New-York, must meet on the second Monday of July in each year, as a board of supervisors of that city and county, and prepare a list of the names of six hundred persons, to serve as grand jurors at the different courts of oyer and terminer, and general sessions, to be held in that city during the then ensuing year, and until new lists shall be returned.

Who to be placed on list.] In preparing such lists, the said boards of supervisors must select such persons only, as they know, or have good reason to believe, are possessed of the qualifications by law required of persons to serve as jurors for the trial of issues of fact, and are of approved integrity, fair character, sound judgment, and well informed.

Who to be omitted.] Persons exempt by law from serving as jurors for the trial of issues of fact, must not be placed on any list of grand jurors, required by the preceding provisions.

Contents of lists &c.] The lists so made out by the said boards of supervisors, must contain the christian and surnames, at length, of the persons named therein, their respective places of residence, and their several occupations ; it must be certified by the clerk of the board of supervisors, and be filed in the office of the clerk of the county, within ten days after the first day of the meeting at which the same is herein directed to be made.

Increasing number of jurors in New-York.] If a circuit judge of the first district, the mayor and recorder of the city of New-York, or any two of them, shall at any time be of opinion that a greater number of persons than that herein required, should be returned, to serve as grand jurors, they may, by an order under their hands, direct such number to be increased ; but such increase shall not exceed one half the number herein required to be selected for that city and county.

Same in other counties.] If the county judge of any other county of this state, shall at any time be of opinion that a greater number of persons than that herein required, should be returned to serve as grand jurors in their county, they may, by an order under their hands, direct such number to be increased ; but such increase must not exceed one half the number herein required to be selected for such county.

Duty of supervisors.] Upon any order which is authorized as above, being served upon the board of supervisors, they must at their next annual meeting, increase the number of persons returned by

them to serve as grand jurors, pursuant to such order.

To facilitate the formation of the list of grand jurors, the supervisor of each town, as soon after the annual session of the board commences as practicable, should present to the board a list of such names as he deems qualified to serve, adding to their names their occupation. Much discrimination and care should be used in preparing this list, for upon the fidelity with which this duty is discharged, depends much of the security of the community in their persons and property, from violence, disorder and crime. The statute prescribes, as mentioned above, that the persons selected as grand jurors, must be men of *approved integrity, fair character, sound judgment*, and well informed. 2 R. S. 720, 4th ed. 905. The jurors must be apportioned according to the population of each town.

Dogs.] The board of supervisors are required to issue their order on the county treasurer, for the amount of the damages appearing by the certificate of the fence-viewers, to have been sustained by the owner of any sheep, killed or injured by dogs, where they are satisfied that the owner or possessor of such dogs cannot be discovered, or that the party injured has failed to recover such damages of such owner or possessor; which order must be paid from the fund constituted by the tax on dogs, and from no other fund. 1 R. S. 704. 2 R. S. 4th ed. 112. *Vide* also the chapter upon the duties of assessors; *post*.

Accounts audited by town auditors.] The board of town auditors meet annually in each town for

the purpose of auditing town accounts, on the last Thursday preceding the annual meeting of the board of supervisors.

They make a certificate, specifying the name of the person in whose favor the account is drawn, the nature of the demand, and the amount allowed, (*vide* the chapter on town auditors,) and deliver the same, or a duplicate, to the town clerk, and also a copy to the supervisor of the town, to be laid by him before the board of supervisors, who are authorised and directed to cause to be levied and raised upon said town, the amount specified in such certificate, in the same manner as they levy and raise other town charges. 1 R. S. 664, 4th ed.

The accounts of justices of the peace and constables, for their fees in criminal proceedings, must be audited by the board of supervisors.

Marshals.] The accounts for the services of marshals, under the act of 1855, for taking the census, must be audited, assessed and collected as a part of the contingent expenses of the county. *Laws of 1855, chap. 64, p. 90.*

The marshal is entitled to receive for his services under that act, the sum of two dollars and no more, for each day he is actually and necessarily employed. *Laws of 1855, chap. 181, p. 259.*

Mode of electing printer and publishing laws.] The board of supervisors are required at their annual meeting, to appoint the printers for publishing the laws in their respective counties. The appointment is made as follows: Each member designates by ballot one newspaper printed in the

county, to publish the laws, and the paper having the highest number of votes, and also the paper having the next highest number of votes, are the papers which must be designated for printing the laws. If there be but one paper printed in the county, then the laws must be printed in that paper. *Laws of 1845, chap. 280, p. 305,*

The laws to be published as mentioned above, are those of a general nature passed by the legislature; and those of a local nature must be published in those counties affected by such local laws. Such printers are allowed ten cents per folio, but no county paper is allowed more than fifty dollars for printing such laws in any one year.

The board must assess and cause to be collected, the necessary expenses for publishing such laws.

State tax.] The law of 1842, providing for the collection of a state tax of one mill on the dollar, of the valuation of the real and personal estate, within the state, is repealed by chap. 335, of the Laws of 1855, except so far as the provisions of that act may be necessary for the collection of the taxes heretofore assessed under the same.

It is now provided that there must be imposed for the fiscal year commencing on the first day of October, 1855, a state tax of one mill and a quarter, on each dollar of the valuation of real and personal property, taxable in this State; to be assessed, raised and collected upon, and by the annual assessments and collection of taxes for that year. *Laws of 1855, chap. 335, p. 611.*

The board must levy and provide for the col-

lection of such tax, in the same manner as has been described for the raising and collection of other taxes.

Indigent insane persons.] In those cases where an indigent insane person has been sent to the asylum by his friends, who have paid the bills therein for six months, if the superintendent certifies that he is a fit patient and likely to be benefited by remaining in the institution, the board of supervisors of his county are required, upon application on oath in his behalf, to raise a sum of money sufficient to defray the expenses of his remaining there another year, and pay the same to the treasurer of the asylum. 2 R. S. 46, 4th ed.

May fix the number of superintendents of poor.] The board has the right to direct that only one superintendent of the poor be elected in each county, who holds his office for three years; but in counties where no such resolution is passed by the board, three superintendents must be elected.

May fill vacancy.] They may appoint superintendents of the poor to fill a vacancy in that office. 2 R. S. 11, 4th ed.

Coroners' accounts.] Before auditing the accounts of coroners, the board must require of them a statement in writing, containing an inventory of all money and other valuable things found with persons on whom inquests may have been held, and the manner in which the same may have been disposed of, verified by the oath or affirmation of the coroner making the same, that such statement is in all respects just and true, and that the money and other articles mentioned therein

have been delivered to the treasurer of the county, or to the legal representatives of such person. *Laws of 1842, chap. 155. 2 R. S. 4th ed., 926.* The board is required to audit and allow to such coroners, all reasonable expenses incurred by them in that behalf, in addition to the fees allowed for holding an inquest. (*Vide post*, chapter on coroners.)

Additional security from commissioners of loans.] When the supervisors have reason to apprehend that the loan commissioners or their sureties are likely to fail, it is their duty to require such commissioner to give such additional security as they deem reasonable and satisfactory. *Laws of 1837, chap. 150. 1 R. S. 4th ed., 576.*

The loan commissioners are required to exhibit to the board of supervisors at each annual meeting of the board, all of the mortgages and other securities taken or held by them for moneys loaned by virtue of their office, and also their books of account, minutes and vouchers.

Non-resident taxes belonging to school districts.] The county treasurer having laid before the board of supervisors, the account, affidavit and certificate required in the case of the non-payment of non-resident taxes belonging to school districts, it becomes their duty to cause the amount of such unpaid taxes, with seven per cent. of the amount in addition, to be levied upon the lands of non-residents, on which the same were imposed, and if imposed on the lands of any incorporated company, then upon such company, in the same manner that the contingent charges of the county are

levied and collected, and the amount returned to the county treasurer.

Suits against school districts.] In 1847, a law was passed relating to the duties of the board respecting suits against the trustees of school districts. In 1849, the first section of that act was amended. *Laws of 1849, chap. 388.* There are so many claims of this kind presented to the board, and the law is so seldom complied with, by those presenting the same, that it has been thought advisable to give the act as now amended, entire. It is as follows:

“§ 1. Whenever a suit shall have been commenced or shall hereafter be commenced against the trustees of a school district, in consequence of acts by them performed in pursuance of the direction of such district, for any act performed by virtue of, or under color of their office, and such suit shall have been finally determined, or whenever after the final determination of any suit commenced by or against any trustees or other officers of a school district, a majority of the taxable inhabitants of any school district shall so determine, it shall be the duty of the trustees to ascertain in the manner hereinafter described, the actual amount of all costs, charges and expenses paid by such officer, and to cause the same to be assessed upon and collected of the taxable inhabitants of said district, in the same manner as other taxes of said district are by law assessed and collected, and when so collected to pay the same over to the officer, by virtue of this act, entitled to receive the same; but this provision shall not extend to suits for penalties, nor suits or proceed-

ings to enforce the decision of the superintendent.

Persons paying costs to present an account verified by oath.] § 2. Whenever any person mentioned in the first section of this act shall have paid any costs, charges or expenses as mentioned in said first section, he shall make out an account of such charges, costs and expenses so paid by him, giving the items thereof, and verify the same by his oath or affirmation ; he shall serve a copy of said account so sworn to, upon the trustees of the district against which such claim shall be made, together with a notice in writing that on a certain day therein specified, he will present such account to the board of supervisors of the county in which such school district shall be situated, for settlement at some legal meeting of such board ; and it shall be the duty of the officer upon whom such copy, account and notice shall be served, to attend at the time and place in such notice specified, to protect the rights and interests of such district upon such settlement.

Payment when to be ordered by supervisors.] § 3. Upon the appearance of the parties, or upon due proof of service of the notice and copy of account mentioned in second section of this act, if the said board shall be of opinion that such account or any portion thereof ought justly to be paid to the claimant, such board may by an order to be made by a majority of all the members elected to the same, and to be entered in its minutes, require such account, or such part thereof as such board shall be of opinion ought justly to be paid to the claimant, by such district, to be so paid ; but no

portion of such account shall be so ordered to be paid which shall appear to the said board to have arisen from the wilful neglect or misconduct of the claimant. The account, with the oath of the party claiming the same, shall be *prima facie* evidence of the correctness thereof. The board may adjourn the hearing from time to time as justice shall seem to require. 1 *R. S.* 911, 4th ed.

SECTION 2. DUTIES OF THE CLERK OF THE BOARD OF SUPERVISORS.

The language of the statute is quite indefinite as to what shall be the qualifications of a clerk of the board of supervisors; at least he must be "some proper person."

The clerk having been appointed by the board, it is made his duty, "to record in a book, to be provided for the purpose, all the proceedings of the board :

"To make regular entries of all their resolutions or decisions on all questions concerning the raising or payment of moneys:

"To record the vote of each supervisor on any question submitted to the board, if required by any member present: and,

"To preserve and file all accounts acted upon by the board."

His office is to be the depository of the books, records, and accounts of the board: the same are to be open without reward to the examination of all persons.

It is his duty to designate upon every account upon which any sum shall be audited and allowed by the board, the amount so audited and

allowed, and the charges for which the same was allowed; and he is also bound to deliver to any person who may demand it a certified copy of any account on file in his office, upon the receipt from each person of the sum of six cents for every folio of one hundred and twenty-eight words contained in such copy. 1 R. S. 367, 682, 4th ed.

It has already been mentioned in the chapter upon supervisors, that the supervisor is required each year to report an abstract of the expenses relating to the poor, in those counties where all of the poor are not a county charge. When the clerk receives such abstracts, it becomes his duty to deliver the same to the county superintendent of the poor of his county, and if he neglects or refuses to deliver them, or certified copies thereof, or if he shall wilfully make and deliver any false copy, he forfeits the sum of one hundred dollars, to be recovered by the district attorney in the name of the people of the state, for the benefit of the poor of the county. 1 R. S. 632; p. 25, vol. 2, 4th ed.

To send aggregate valuation of real estate to comptroller.] The clerk of the board of supervisors of the several counties, is required, on or before the second Monday in December of each year, to transmit to the comptroller by mail, in the form which may be prescribed by him, a certificate or return of the aggregate valued amount of real and personal estate in each town, or ward, as corrected by the board of supervisors. The comptroller sends a blank to each clerk of the board, and in filling up and returning the same the clerk must

add his name and post-office address. The clerk who neglects or refuses to make such return, forfeits to the people of this State the sum of fifty dollars. *Laws of 1836, chap. 117, p. 155.*

To publish names of persons who present claims.] He must publish in one or more public newspapers in his county, the name of every individual who may have had any account audited and allowed by the board, and the amount of such claim as allowed, together with the amount claimed. (*For form of this statement, see Appendix, No. 15.*)

Equalization.] He must also publish in the manner above stated, the proceedings of the board upon the equalization of the assessment rolls.

To publish abstract of town accounts.] He must also prepare for publication the abstracts of town accounts that are made out by the town auditors and forwarded to him, and cause the same to be published. (*See form of such statement, Appendix, No. 16.*) 1 R. S. 683, 4th ed.

To publish supervisor's accounts.] It is also the duty of clerks of boards of supervisors, on the thirty-first day of December, or within ten days previous thereto, in each year, to make out a statement, showing,

1. The amount of compensation audited by the board of supervisors to the members thereof severally, within the year, and the items and nature of such compensation as audited :

2. The number of days the board shall have been in session within such year, and the distance travelled by the members respectively in attending the meeting of the board :

3. Whether any accounts were audited or allowed without being verified according to law, for any member of the board of supervisors, or any other person, and if any, how much, and for what.

Such statement must be certified by such clerk and printed in a newspaper printed in the county, in the manner that the accounts audited by the board of supervisors are required to be published, within two weeks after such statement shall be made out. (*See form, Appendix, No. 17.*) It is made the special duty of such clerk to see that the same is so published, and for intentionally neglecting to do so, such clerk is deemed guilty of a misdemeanor. 1 R. S. 683, 4th ed. *Laws of 1847, chap. 455, p. 586.*

In the preparation of the statements in regard to the equalization of the assessment rolls, much variety of practice exists in different counties. Some clerks prepare only one table, which they make to consist of the results of the equalization, with the several columns for the different taxes annexed. This process fails to spread before the electors all of the *proceedings* which the statute seems to indicate should be published. For convenience, these proceedings may be published in separate statements, or tables.

The table, or statement, relating to the equalization of the assessment rolls only, may be in the form prescribed in Appendix, No. 18; and when the ratio is made and the tax apportioned, then it is suggested that the table should be in the form as given in Appendix, No. 19. In some counties, this is called the "statistical table." *Form No. 19*

is the one used in St. Lawrence county; the proceedings of the board in that county are prepared with great care.

When the supervisors make an order abolishing the distinction between town poor and county poor, and decide to have all the poor a county charge, the clerk of the board must serve notice of such order immediately on the overseers of the poor of every town in the county, and also upon the clerk of each town, village or city within such county. 2 R. S. 14, 4th ed. Also 1 R. S. 15, 4th ed., secs. 34 and 38.

To approve bonds.] The bonds of superintendents of the poor are executed to the board of supervisors. The clerk is required to endorse upon such bond a certificate to the effect that the board have approved of the bond, and after endorsing his approval, such bond is required to be filed in the office of the county clerk. *Laws of 1848, chap. 327, p. 455.*

To prepare list of grand jurors.] The clerk prepares the list of grand jurors and files the same in his office, and forwards a certified copy of such list to the county clerk. This should be done without delay, either during the session of the board or immediately thereafter.

General abstract.] The duty of putting in form the statement usually denominated the "general abstract," devolves upon the clerk. This usually consists of the following number of columns:

1. The name of the town.
2. The number of acres of land in each town.
3. The assessors' valuation of the real estate.

4. The equalized valuation of real estate.
5. The amount of personal property.
6. The aggregate equalized valuation.
7. Amount of state tax.
8. Proportion of county tax.
9. Amount of town taxes.
10. Rate of tax upon one hundred dollars of assessors' valuation.
11. Names of collectors.
12. Amount to be paid to the overseers of the poor.
13. Amount to be paid to the commissioner of highways.
14. Amount to be paid to the supervisors.
15. Amount to be paid to the county treasurer for the support of the town poor at the poor house.
16. Rejected taxes assumed.
17. Surplus levy of 18 .
18. Deficit levy of 18 .
19. Assumed non-resident school tax.
20. Amount to be paid to the commissioner of highways for non-resident highway labor.
21. Amount to be paid to the county treasurer for non-resident school taxes re-assessed.
22. Rejected taxes re-assessed.
23. Amount to be paid to county treasurer for county levy, and rejections re-assessed and assumed.
24. Aggregate state, county, and town appropriations.
25. Amount in the hands of the county treasurer for military fund credited to each town.

26. Names of incorporated companies; their capital stock, real estate, amount taxed, and tax. (*For form of general abstract, see Appendix, No. 20.*)

To furnish county treasurer with general abstract.] The clerk should furnish the county treasurer with a certified copy of the general abstract.

Special meetings.] Upon the written request of a majority of the supervisors of the county, the clerk may call special meetings of the board. 1 R. S. 677, sec. 8.

To lay notice of apportionment of moneys before the board.] When the clerk of a county receives from the superintendent of public instruction notice of the apportionment of moneys to be distributed in the county, he files the same in his office, and transmits a certified copy to the county treasurer, and to the clerk of the board of supervisors of the county; and the clerk of the board is required to lay such copy before the supervisors at their next meeting.

To transmit copies of resolutions to superintendent of public instruction.] The clerk is required to send certified copies of all resolutions passed by the board, relating to the raising of money for school purposes, to the superintendent of public instruction.

To send certificate relating to loan commissioners to comptroller.] The board are required at each annual meeting, to examine the mortgages, securities, accounts and minutes of the commissioners for loaning the moneys belonging to the United States, and to certify under their hands, the state in which they find such moneys, and the result of their ex-

amination. The clerk must forthwith transmit such certificate or a certified copy of the same to the comptroller. 1 *R. S.* 577, 4th ed. (*For form of certificate, see Appendix, No. 21.*)

New towns.] The board having decided to erect a new town, and having designated the name, the time, and place of holding the first annual town meeting, and the three electors to preside at such meeting, it becomes the duty of the clerk to transmit a notice, to be signed by him or the chairman of the board, to the persons designated to preside at such meeting, to the end that such notice may be posted in four of the most public places in the town, at least fourteen days before holding such town meeting; which notice must designate the time and place for holding such meeting. 1 *R. S.* 678, 4th ed. While the duty of posting such notices is devolved upon the persons who are designated to preside at such meeting, yet it is recommended that the clerk should especially enforce such duty upon the persons so designated, in order to prevent any irregularity in the holding of such meeting.

To exchange published proceedings.] It has been recommended by the comptroller, that each clerk of the board should annually transmit to the clerks of the several other boards throughout the State, a copy of the published proceedings of his board. This matter is alluded to in the next section of this chapter. In order to facilitate the transmission of these documents, it would be well for the clerk of each board, before the first day of September in each year, to send his post-office address to

each county clerk throughout the State. By this arrangement the proceedings would be more certain to reach their destination.

Town houses.] He is required to furnish certified copies of all resolutions which may be passed by the board, authorising money to be raised for the purchase of a site for a town house, and for paying the expenses of erecting the same. *Laws of 1847, chap. 197.*

Collector's warrant.] In preparing the warrants for the collection of taxes, to be delivered to the collectors of the several towns, the clerk usually provides himself with printed forms. It would be well to have printed upon or attached to the warrant, the 29th and 30th sections of the act passed May 10th, 1845, chap. 180, together with the amendment of the 29th section, as prescribed by the Laws of 1847, chap. 482. 1 R. S. 723, 4th ed. By printing those two sections upon the warrant, the collector will be less liable to make mistakes in the discharge of his duty, so far as giving the notices and performing the other duties required by the act of 1845. (*Form of collector's warrant, Appendix, No. 14.*)

To send description of seal to county clerk and secretary of state.] The board of supervisors are now authorised to adopt a seal, and when so adopted, it becomes the duty of the clerk to cause a description of the same, together with an impression therefrom, to be filed in the office of the county clerk, and in the office of the secretary of state; and the same thereupon becomes the seal of the board of supervisors of such county. Copies of

all papers duly filed in the office of the clerk of the board, and transcripts from the books of records kept in his office, certified by him, with the seal of office affixed, are evidence in all courts and places, the same as if the originals were produced. *Laws of 1855, p. 383.*

What papers to be furnished to county treasurer.] The clerk usually furnishes the county treasurer with a certified copy of the general abstract, the form of which has been given in the appendix at No. 20. This is indispensable to the treasurer, in order that he may discharge his duties correctly with the several persons and public officers to whom he is required to disburse money.

It is desirable that he should also furnish the county treasurer with certified copies of all resolutions passed by the board, appropriating money, and with certified copies of all county orders made by the board. This will not only facilitate the performance of the duties of the treasurer, but will tend to protect the treasury against frauds. He should also furnish the county treasurer with certified copies of the list containing the per diem allowance of grand and petit jurors.

Credentials of officers.] Whenever any officer is chosen or appointed by the board, it becomes the duty of the clerk to furnish such officer with a certified copy of the resolution by which he was appointed.

To keep a journal.] It is recommended that the journal of the proceedings of the board, be kept as nearly as may be in the form usually adopted in keeping the journal of legislative proceedings.

Order book.] It is desirable that the clerk should keep a book to be denominated the "order book," in which should be entered a note of all town and county orders issued by the board, containing the names of the persons to whom orders were issued, the number of the order, and the amount.

Form of orders.] In drawing orders, the practice is adopted in many counties to draw them payable to the *order* of the person to whom they are issued, and not to the *bearer*; making them payable to the *order* of the party is the more desirable form. By adopting that form, the treasury is less liable to be defrauded by spurious orders; and in case an order should be lost, the party to whom it rightfully belongs will have less inconvenience in procuring another.

To keep a record.] In addition to the journal above mentioned, it is desirable that a record be made of all such proceedings as are required to be published. Such record is not only convenient as a matter of evidence, when any of the proceedings of the board are required to be proved in court, but the same is necessary as a matter for future reference.

Index.] To facilitate the reference to any of the records or proceedings of the board, it is recommended that the clerk should keep a book to be denominated the "index book," in which he should arrange alphabetically the heads of all of the subjects embraced in such records and proceedings. In preparing the proceedings of the board of supervisors for publication, it is recommended that the clerk should group together all the acts and reso-

lutions passed by the board, so that they may be read and examined without the trouble of going through with the whole of the proceedings, particularly those resolutions which are designed to have the force of legislative enactments.

To report to adjutant general.] He is required, to inform the adjutant general of the number of persons enrolled in each county, under the act for the enrolment of the militia, liable to perform military duty, including all members of volunteer companies, and all members of fire companies, on or before the first day of December in each year. *Laws of 1854, chap. 398, title 3, p. 1030.*

Fees.] He is entitled to receive a reasonable compensation for his services. That compensation must be fixed by the board and paid by the county, besides the compensation already mentioned.

In preparing the certificate to be annexed to the published proceedings of the board, the clerk may use the form prescribed at No. 22, *Appendix*.

SECTION 3. MODE OF PROCEDURE AS A BOARD.

The several supervisors of the towns having convened for the purpose of forming a board, and holding their annual meeting, the clerk of the last board proceeds to call the roll of the names of the supervisors elect.

Should each town clerk report the name of the supervisor of his town, as it has been suggested that he should do, the roll will be called from the list of such names. The clerk, it seems, may ascertain the names of the supervisors elect, from any authentic source. Should the seat of a member of the board be contested, the certificate of the

town clerk would settle the question, until a committee of the board should report, and the seat be otherwise awarded.

A majority appearing constitutes a quorum for the transaction of business.

The first step ordinarily is to elect a chairman, pro tem. This may be done by a motion, by any member elect, who sees fit to make the same, the person moving at the same time taking the sense of the meeting, by an ordinary *viva voce* vote. Some member then should offer a resolution in writing, nominating a chairman of the board. The chairman pro tem. takes the sense of the meeting in the ordinary manner, and the person receiving the greatest number of votes is declared chairman of the board. The chairman may be elected by ballot, should that be deemed by a majority the more satisfactory manner. He holds his office for that meeting, and for all the subsequent meetings of the board during the year.

The board next proceeds to elect a clerk, whose duties are pointed out in the last section; those duties in other respects will necessarily be referred to again in this section.

The board being thus organized, before any other steps are taken, provision should be made for adopting a code of rules, and orders for the regulation and government of its proceedings. For this purpose a member offers a resolution as follows:

. *Resolved*, That the rules of proceeding as laid down in the work entitled (*here insert the title of the book*,) be adopted as the rules for the government

of this body, so far as applicable, until otherwise ordered; and that the chairman appoint a committee of three, to report as soon as practicable, upon a code of standing rules for the government of this board. The chairman appoints the committee. The next step ordinarily is the appointment of the standing committees. As this requires some time, and the business of the board is much facilitated by selecting the several committees with reference as much as practicable to their business habits and occupations, and as the chairman requires a little time to become acquainted with the members, it is customary at this stage of the proceedings to adjourn for a short time.

The committee on rules, in the mean time, prepare their report, and upon the assembling of the board at the adjourned hour, report those already adopted, or such amendments as they deem proper.

The following rules, taken as far as applicable, from the manual of the Legislature of 1855, are recommended as convenient and appropriate standing rules to be adopted.

RULE 1.

Upon the appearance of a quorum, the chairman having taken the chair and the members being called to order, the minutes of the preceding day must be read, to the end that any mistakes therein may be corrected by the board.

RULE 2.

Order of business.] After the minutes are read and approved, the order of business shall be as follows:

1. The presentation of petitions.

2. Reports of standing committees.
3. Reports of select committees.
4. Introduction of resolutions, notices, and motions.
5. Unfinished business.
6. Special orders of the day.
7. General orders of the day.

RULE 3.

Standing committees.] Standing committees to consist of three or five members, shall be appointed by the chairman unless otherwise ordered by the board, on the following subjects:

1. To audit sheriffs' and jailers' accounts.
2. To audit justices' and constables' accounts.
3. To audit miscellaneous accounts.
4. To foot assessment rolls, compare copies with the originals, and collect the amounts.
5. To equalize valuation.
6. To provide for rejected taxes.
7. To apportion taxes and make ratio.
8. To settle with county treasurer.
9. To fill collector's warrant.
10. To apportion and make list of grand jurors.
11. To make abstract.
12. To settle with county superintendent of poor.
13. On ways and means.
14. To examine proceedings of commissioners of loans.
15. To assess non-resident highway labor.
16. To examine and foot military rolls.
17. To settle with judicial officers.*

* In those counties where the number of towns is small, a less number of committees can transact the business. In some counties but five or six

It shall be the duty of each of the several committees, to inquire into the matters indicated by its name, and to report thereon to the board any resolution that it may deem expedient.

RULE 4.

Priority of business.] All questions relating to the priority of business, that is, the priority of one question or subject matter over another under the same order of business, shall be decided without debate.

RULE 5.

Chairman to preserve order.] The chairman shall preserve order and decorum, and decide all questions of order, which decision shall be final unless an appeal is taken to the board. On an appeal from the decision of the chairman, he shall have the right in his place to assign his reason for his decision. He shall also have the right to substitute any member to perform the duties of the chairman, but such substitution shall not extend beyond one day unless by leave of the board.

RULE 6.

Vote of chairman.] When the board is equally divided, including the chairman's vote, the question shall be deemed to be lost.

RULE 7.

Order.] When the chairman is putting a question, no member shall walk across or out of the room.

RULE 8.

Order of speaking.] A member rising to debate, to give a notice, make a motion or report, or to present a petition or other paper, shall address the

standing committees are appointed; the several subjects upon which the board is required to act being referred to select committees, or else the business done in the committee of the whole.

chairman, and shall not proceed further until recognized by him.

RULE 9.

Members entitled to speak.] No member shall speak more than twice to the same general question without leave of the board.

RULE 10.

Order and silence.] While a member is speaking, no member shall entertain any private discourse, or pass between him and the chair.

RULE 11.

Calls to order.] If any member is speaking, or otherwise transgressing the rules of the board, the chairman or any member may call to order, in which case the member so called to order shall immediately set down unless permitted to explain.

RULE 12.

Members entitled to vote.] Every member who shall be present when any question is stated from the chair, shall vote thereon, unless excused by the board, or unless he be directly interested in the question, in which case he shall not be allowed to vote.

RULE 13.

Manner of presenting petitions.] Every member previous to presenting a petition or memorial, shall endorse on the same the subject to which it relates, and add his name; the clerk hands the same to the chairman, who shall state the substance thereof, after which he shall put the question on the disposition of said petition or memorial.

RULE 14.

Motions and resolutions.] Every motion or resolu-

tion shall be first stated by the chairman, or read by the clerk before debate, and immediately before the question is put; and every such motion, except of the class of motions embraced in rule 18, shall be reduced to writing if the chairman or any member desires it.

RULE 15.

Withdrawal of motion.] After a motion is stated by the chairman, it shall be deemed to be in the possession of the house, but may be withdrawn at any time before a decision or amendment.

RULE 16.

Division of questions.] If the question in debate contain several distinct propositions, the same shall be divided by the chair at the request of any member, to the end that a vote may be taken on each proposition, but a motion to strike out and insert shall be deemed indivisible.

RULE 17.

Filling blanks.] When a blank is to be filled, and different sums or times are proposed, the question shall first be put on the largest sum and longest time.

RULE 18.

Motions when receivable.] When a question is under debate, no motion shall be entertained, unless for an adjournment of the board, for the previous question, to postpone indefinitely, to postpone to a certain day, to lay it on the table, to commit it, or to amend it; these several motions shall have precedence, in the order in which they are here stated.

RULE 19.

A motion to lay a question on the table shall be

decided without amendment or debate, and a motion to postpone a question indefinitely, or to adjourn to a day certain, until it is decided, shall preclude all amendment of the main question.

RULE 20.

Previous question.] The “previous question” shall be as follows: “shall the main question be now put”? and until it is decided, shall preclude all amendment and debate. When on taking the previous question the board shall decide that the main question shall not now be put, the main question shall be considered as still remaining under debate. The main question shall be on the passage of the resolution or other matter under consideration.*

RULE 21.

Adjournment.] A motion to adjourn the board shall always be in order and decided without debate.

RULE 22.

Entries on minutes.] In all cases where a resolution or motion shall be entered on the minutes, the clerk shall also enter the name of the moving member.

* The previous question, about which there is sometimes so much confusion, is a very simple matter. When a member moves the previous question, it is equivalent to saying substantially this: I now move Mr. President, (*or Chairman, or Speaker,*) that you take the sense of this body, whether the main question shall not now be put. Hence the presiding officer usually says the previous question is called for, shall the main question be now put? As many as are in favor of entertaining the motion for the previous question will please say aye, those opposed will please say no. If the body decides against the motion, then the main question remains open for debate, if in favor of the motion for the previous question, then the presiding officer proceeds to take the vote on the main question, which must be taken without amendment or debate

RULE 23.

Ayes and nays.] If any five members require it, the ayes and nays upon any question shall be taken and entered upon the minutes.

RULE 24.

Committee of the whole.] In forming a committee of the whole board, the chairman shall leave the chair and shall appoint a chairman to preside.

RULE 25.

Rules for that committee.] The rules of the board shall be observed in the committee of the whole, so far as they may be applicable, except limiting the number of times of speaking, and except that the ayes and noes shall not be taken, and except also that a motion to rise and report progress shall always be in order, and shall be decided without debate.*

RULE 26.

Motions to reconsider.] No motion for reconsideration shall be in order, unless on the same day, or the day following that on which the decision proposed to be reconsidered took place; nor unless one of the majority shall move such reconsideration.

* Rising and reporting progress by a committee of the whole, is equivalent to a motion of adjournment by the body from which the committee is formed, that being the only mode, until the committee is prepared to report in full, and thus complete their business, to terminate its session for the day. The temporary chairman vacates the seat, and the presiding officer resumes the same. The temporary chairman turning to the presiding officer reports: Mr. President, (or *Speaker, or Chairman,*) the committee of the whole to which was referred etc., have had the same under consideration, and not having gone through with the same have directed me to report that fact, and ask leave to sit again. The presiding officer then puts the question on accepting the report and granting leave to sit again, which must of course be taken without amendment or debate. If this be decided in the negative, it discharges the committee, and takes the subject matter away from it. If in the affirmative, it is referred to them again, at such future time as the body shall resolve itself again into committee of the whole.

A motion for reconsideration being put and lost, shall not be renewed ; nor shall any vote be a second time reconsidered without unanimous consent.

RULE 27.

Altering rules.] A standing rule or order of this board may be suspended, changed or rescinded, upon one day's previous notice being given of the motion therefor, by a vote of a majority of all the members elected. Such notice shall in all cases state specifically the object of the suspension.

RULE 28.

Special orders.] No resolution or other matter, shall be made a special order of the day, for a particular day, without the assent of two thirds of the members present ; nor shall more than three resolutions or other matters be made special orders for the same day.

RULE 29.

Excuse from voting.] Every member requesting to be excused from voting, may make a brief and verbal statement of the reason for making such request, and the question shall be taken without further debate.

Should the board adopt the foregoing rules, or those substantially like them, the chairman would of course appoint the number of standing committees prescribed by such rules.

Should it be deemed advisable by the board, for any cause, to have the chairman appoint the standing committees before the committee on rules have reported, he may do so ; and in such case he will appoint such, and as many standing

committees as the board may direct, or as he may deem proper, according to the usual practice in the several counties, and the committee on rules will adapt their report so as to have it conform to the action of the board.

It has been ascertained that in many of the older counties, and particularly in those counties where the proceedings of the board have been characterised by much regularity and uniformity, the same number of standing committees, with the same designations as are recommended above, have annually been appointed, and it is certainly a matter of considerable importance that the proceedings of the several boards throughout the State should be as nearly uniform as practicable.

The board being fully organized by the election of a chairman and clerk, the adoption of rules and the appointment of the standing committees, is prepared for the transaction of its ordinary business.

For the purpose of giving the several committees time to enter upon the business that may come before them, the board usually adjourns from twelve to twenty-four hours.

Persons having business to transact with the board, should first present it to the committee having the subject in charge.

The committee to audit accounts.] There is no difficulty in auditing the accounts of public officers where their fees are defined and fixed at a definite amount by statute; all that is necessary in such cases is to see that the claim is in proper form, and that the evidence of the rendition of the service

is indisputable. One great perplexity consists in disposing of those claims which are addressed to the discretion of the board, and for which no definite compensation is fixed.

There are cases where the vigilance, fidelity and extraordinary efforts of public officers, have contributed so much to the good order of society and the security of property, that it is manifestly just and proper that such extra labor should meet its due reward.

While on the one hand such services should be rewarded in a liberal spirit, yet on the other, too much care cannot be exercised in guarding the treasury against the importunities of those who are prone to deem their public services, however slightly meritorious, as peculiarly entitled to extra compensation.

Senator Tracy, in the case of *Hatch v. Mann*, 15 *Wend.* 49, in alluding to the practice of public officers charging extra compensation for their services, uses the following forcible and beautiful language: "If one public officer may be allowed to receive a compensation beyond what the statute allows for the act, any other may do the same, and the time would soon come when officers high in authority would put their *extraordinary efforts* in the market, to be had by the highest bidder. This is a revolting view of the case I admit, but it is one forced on my mind by the case. It carries my thoughts back to scenes which I trust are never to be witnessed in this country, when chancellors and judges made a business transaction of receiving gratuities from parties for expediency, i. e.,

making *extraordinary efforts* to dispose of their suits. These gratuities were not deemed bribes for preventing justice, but merely compensations for *extraordinary efforts* beyond what an officer was strictly bound to make.

The great Lord Bacon, by the working of whose mighty mind

“ Darkness fled,
Light shone, and order from disorder sprung,”

secured his eternal epitaph of “wisest, brightest, meanest of mankind,” not by contaminating his fingers with bribes to do injustice, but by receiving gratuities for making *extraordinary efforts* to discharge his official duty. It was because he had an itching palm, and sold his office for gold, that he was impeached, fined, imprisoned, degraded and disgraced; and that genius which like a meridian sun should have illumined the world, for this practice of taking extra pay for *extraordinary efforts*, was shorn of its beams, and will forever in dim eclipse, disastrous twilight shed.”

Sheriff's accounts.] The fees of sheriffs are pointed out in the chapter on sheriffs. Those which come before the board to be audited, usually consist of his charges for paying temporary guards, for guarding jails and prisons; for removing prisoners during the prevalence of a pestilence, or in the case of fire; for providing rooms for such prisoners; for expenses incurred in the repairing of county buildings, and in providing for the sustenance of those confined in jails and other places of confinement; for transporting convicts, and for his fees in attending courts for the trial of criminals, and for the

service of process in such courts. 1 *R. S.* 675, 4th ed. *Id.* 38.

His accounts should be made out in items, and duly verified like all other accounts to be presented to the board.

Justices' accounts.] The fees of justices are pointed out in Chapter IV of this treatise. The justices in preparing the items of their account, should give the title of each cause or proceeding that comes before them for which they claim compensation from the board, and immediately following the title, each step taken should be noted. The account should also state the offence, and where it was committed. Unless such place is stated, the committee should not attempt to audit the account, but should hand the same back to the party for correction. 1 *R. S.* 680, 4th ed.

Constables.] The fees of constables are pointed out in the chapter upon the duties of that officer.

The committee should require of the constables who present their claims to be audited, that their accounts be so made out that it will appear in what place the offence was committed, concerning which such constables have rendered service, and the nature of the offence. (*Form of constables' accounts, Appendix, among constables' forms.*)

It is indispensable that they should be so prepared, to the end that each town may be charged with its proper share of such expenses.

Discretionary allowances to constables.] Where a subpœna for witnesses in criminal cases, containing one or more names, is served by a constable, or other officer, such officer is entitled to mileage

only for the distance going and returning actually traveled to make such service upon all of the witnesses in such case, and not separate mileage for each witness, unless the board may deem it equitable to make a further allowance. 2 *R. S.* 935, 4th ed.

The board may allow such further compensation for the service of process, and the expense and trouble attending the same, as they may deem reasonable. *Id.*

For other services in criminal cases for which no compensation is specially provided, such officers may receive such sum as the board may see fit to allow. *Id.*

A constable is not entitled to fees for traveling to serve a criminal warrant unless the service is made. *Ex parte Wyles*, 1 *Denio*, 658. The same rule applies to a sheriff.

But where services have been rendered and expenses incurred in good faith by a vigilant and faithful officer in the discharge of his duty, where no compensation is fixed by law, the board under the provision of the statute above cited, have the right, and it is a duty usually cheerfully performed, to make just and equitable allowances for such services.

Report of the committee.] The committee having examined the accounts presented, and allowed such as they may deem proper, and endorsed on those allowed, the words "audited at \$ this day of 18 ;" and on those not allowed, the words "disallowed," next prepare their report. (The ordinary form of such report is given in the Appendix, No. 23.)

Committee to foot rolls.] This committee and the committee to audit accounts usually commence their labors immediately after the board is fully organized. Should each supervisor follow the suggestions made at page 12, the task imposed on the committee will be less onerous. The labors of this committee should be completed as early in the session as practicable, in order to give the committee on the equalization of the valuation of property in the several rolls, time to complete their duties.

Equalization.] The committee to whom is referred the matter of equalizing the valuation, will see in what their duties consist by referring to page 17.

Committees to settle with treasurer, judicial officers, superintendents of poor, and commissioner of loans.] These several committees, in order to expedite the business of the board, should commence their duties if possible during the first week of the session.

To secure the early attendance of these officers before the board, it is recommended that the clerk be directed to notify them at least four weeks before each annual meeting, of the time when their claims will receive attention.

Committee to audit miscellaneous accounts.] To this committee is referred all accounts and claims except those of sheriffs, jailers, justices and constables.

Committee on rejected taxes.] This committee, and the committee to provide for the assessment of non-resident highway labor, is referred to Chapter XXI, on taxes.

The other committees will see their duties sufficiently indicated in section first of this chapter.

Publishing notices.] It is recommended that each board should pass a resolution defining the time, during the session, when all accounts which are designed to go before the board must be presented, and that they direct the clerk annually to publish such resolution in the county papers, for at least six weeks before the annual meeting.

To exchange published proceedings.] It has been recommended by the comptroller, the Hon. J. M. Cook, that each board should exchange its published proceedings with all the other boards throughout the state. This very valuable suggestion of the comptroller, derives importance from the consideration that such proceedings in many cases are clothed with legislative authority. It is respectfully suggested whether it would not be well for the comptroller to recommend that the pamphlets containing the proceedings, be published sufficiently uniform with regard to size, that they may be bound and preserved as a matter of reference.

CHAPTER III.

OF THE TOWN CLERK.

SECTION 1. How chosen or appointed.

2. His powers and duties.

SECTION 1. HOW ELECTED OR APPOINTED.

The town clerk is elected by ballot at the annual town meeting in towns, and in case the town at such meeting neglects to choose its clerk, it is

made the duty of any three justices of the peace of the town, to appoint a clerk, which must be done by warrant under their hands and seals; and the clerk thus appointed holds his office until another is chosen or appointed in his place. He has the same powers, and is subject to the same duties and penalties as if he had been duly chosen by the electors. 1 R. S. 347.

Who eligible, and oath of office.] No person is eligible to that office unless he be an elector of the town for which he is chosen. Before he enters upon the duties of the office, and within ten days after notice of his election or appointment, he is required to take and subscribe the oath denominated the constitutional oath, which he must cause to be filed within eight days thereafter in the office of the town clerk. (See form No. 1, *Appendix*.)

Penalty for not serving.] If he refuses to serve, he forfeits to the town the sum of fifty dollars.

SECTION 2. HIS POWERS AND DUTIES.

Custody of books and papers.] He has the custody of the records, books and papers of the town, and is required to file all certificates of oaths and other papers required by law to be filed in his office.

To transcribe minutes of town meeting.] He is required to transcribe, in the book of records of his town, the minutes of the proceedings of every town meeting held therein; and he is required to enter in such book every order or direction, and all rules and regulations made by any such town meeting.

Deliver board of supervisors copies of entries of votes.] He

must deliver to the supervisors, before the annual meeting of the board of supervisors of the county, in each year, certified copies of all entries of votes for raising money, made since the last meeting of the board of supervisors, and recorded in the town book.

Names of constables.] Immediately after the qualifying of any constables chosen or appointed in their respective towns, the town clerks are required to return to the county clerks of their respective counties, the names of such constables.

Penalty for not returning constables' names.] A wilful omission on the part of the clerk to make such return, is declared to be a misdemeanor, and on conviction thereof, the party offending will be adjudged to pay a fine not exceeding ten dollars.

Certified copies of papers.] Copies of all papers duly filed in the office of the town clerk, and transcripts from the books of records, certified by him, are evidence in all courts, in like manner as if the originals were produced. 1 R. S. 350.

Names of assessors and collectors.] The clerks of the cities of New-York, Albany, Hudson, Schenectady, and Troy, and the town clerks of the several towns, shall yearly, before the first day of October in each year, certify and deliver to the supervisors of their respective towns, the names of all the assessors and collectors in their respective cities and towns, that the same may be delivered to the board of supervisors at their next meeting. 1 R. S. 418; 4th ed., 755.

Clerk of town meetings.] The town clerk elected

or appointed last before any town meeting, must be the clerk of the town meeting. He is required to keep faithful minutes of its proceedings, in which must be entered at length every order or direction, and all rules and regulations made by such meeting. 1 R. S. 342. If he be absent the electors may choose a temporary clerk to supply his place.

To notify persons elected of their election.] The result of the canvass of all town meetings must be read by the clerk to the persons there assembled, and such reading is deemed notice of the election to all persons whose names are on the poll list as voters. The clerk is required to enter in the minutes kept by him, the proceedings of the meeting at length; and within ten days after the town meeting, transmit to each person elected to any town office a notice of his election, in case the name of such officer is not found on the poll list as a voter.

To give notice to clerk of board of supervisors of the election of a supervisor.] It is recommended that the town clerk of each town should transmit to the clerk of the board of supervisors within twenty days after the annual town meeting, the name of the supervisor elected in his town who may have qualified; and should a vacancy occur and another supervisor be elected or appointed, the town clerk should immediately notify the clerk of such board of the name of the person so appointed. He should give the post office address of the supervisor. This would be a matter of much con-

venience to the clerk of the board of supervisors, as it frequently becomes necessary for him to correspond with the supervisors of the several towns.

To notify county clerk of election of justices of the peace.] Within ten days after any town meeting at which an election for justice of the peace shall have been had, the town clerk is required to transmit to the clerk of his county, a certificate of the result of the election, under his hand, which shall be evidence of the facts therein certified. 1 R. S. 344; p. 337, 2d ed., 651, 4th ed.

To meet with town auditors.] The town clerk is required to meet with the justices of the peace, or any two of them, and the supervisor, to compose the board of town auditors; such meeting must be held at the place of holding the last town meeting, on the last Thursday preceding the annual meeting of the board of supervisors of the county.

To have the custody of and enter accounts audited by town auditors.] He is to have the custody of the accounts audited by the town auditors: the same are to be kept on file by him, for the inspection of any of the inhabitants of the town. Such accounts are to be produced by him at the next town meeting, and read by him, if required, to the electors. Such accounts as are audited must be entered by him in a book to be provided by him for that purpose, which entry must state the name of the person in whose favor the account is drawn, the nature of the demand, and the amount of such accounts. 1 R. S. 355; 4th ed., 664.

To deliver to successor all books and papers.] Like

other officers, he is bound to deliver over whatever books, papers or property may be in his hands belonging to the town, to his successor in office. His successor must demand the same immediately after he enters upon the duties of his office, and the delivery must be made without delay.

To read notices of applications to alter towns.] It is the duty of the town clerk to read to the electors, immediately before proceeding to the election of town officers, all notices of applications to alter the boundaries of towns, or to divide or erect new towns, in towns affected by such applications.

Floating timber.] Provision is made by law for the protection and preservation of floating timber, see 1 R. S. 698; p. 695, 2d ed., 108, 4th ed., and whenever the owner of any land upon which the same may have drifted, shall have delivered to the town clerk of the town a note in writing, signed by him, describing such timber, the quantity thereof, the marks upon the same, and the place where the same may be lodged, it becomes the duty of the clerk to file the same in his office, and to produce the same for the inspection of any one who shall request it. If no person claims the timber within six months after the filing of such note in writing, the owner of the land where the same may be drifted may give notice in writing to the clerk of the city or town, whose duty it then becomes to give twenty days' notice in three public places in the city or town, in writing, by advertisement, when the same will be sold; and at the expiration of that time such clerk is required to

sell the same at public auction. For making such sale he is entitled to the same fees as are allowed to officers making sales on executions issued out of justices' courts. It is his duty to apply the moneys arising from such sale as follows:

First. To the payment of the fees:

Second. To the payment of the damages which the owner or possessor of the land may have sustained by reason of such lumber or timber: and,

Third. The balance, if any, must be paid by such clerk to the treasurer of the county wherein such timber may have been found, for the use of the poor. Before deciding upon the amount which he proposes to pay to the owner of the land for his damages, the clerk must see that such damages have been assessed by two fence-viewers of the town, and a specification of such damages, signed by such fence-viewers, filed in his office.

1 R. S. 699; 109, 4th ed.

Special statutes have been passed in regard to the duties of the town clerk of the town of Queensbury, and the clerk of the city of Albany, in this behalf, for which see the page of the statute last above cited.

To file orders of highway commissioners.] It is the duty of the town clerk, to file and record in his office all orders made by highway commissioners for laying out, altering, or discontinuing a road, and to note the time of recording the same, and to post a copy of such order on the door of the house where the town meeting is usually held.

1 R. S. 513; 1041, 4th ed.

Duty of clerk classifying justices in new towns.] In the formation of new towns, it frequently becomes necessary to elect four justices of the peace, and in order to determine the length of time each shall serve, the town clerk and supervisor of such new town, must meet in pursuance of a notice served before that time by the supervisor, to aid in classifying such justices; and for that purpose they cause to be written on separate pieces of paper, as near alike as may be, the numbers, one, two, three, four, if there have been so many justices elected, and roll such pieces of paper, as near alike as may be, and deposit them in a box. The persons elected justices, severally draw one of the said pieces of paper, and are classed according to the number found on the paper drawn by him, and holds his office accordingly. If the supervisor be absent from his town, or unable to serve, or his office be vacant, the town clerk may perform all the duties in that behalf that are required of him and the supervisor jointly.

The clerk and supervisor make duplicate certificates of the result of such drawing, or such one of them as attends the same, one of which certificates must be filed in the town clerk's office, and the other with the county clerk. 1 R. S. 111; p. 102, 2d ed., 321, 4th ed.

To record resolution raising money.] Whenever the electors at a town meeting shall determine to raise a larger amount of money for the improvement of roads and bridges than is now provided for by law, it becomes the duty of the town clerk

to record such resolution in the minutes of the meeting, and deliver a copy thereof to the supervisor of the town.

To give notice of special town meeting.] Before the holding of any special town meeting, the town clerk is required to give at least eight days' notice thereof, under his hand, to be posted in four of the most public places in the town. He is required to specify in such notices the time, place and purposes of such meeting.

When to call special town meeting.] He is required to call special town meetings in the following cases: *First*, when a vacancy occurs in the office of supervisor, assessor, commissioner of highways, or overseer of the poor. *Second*, whenever twelve or more persons eligible to the office of supervisor, shall, by application in writing, addressed to him, and signed by them, request a special town meeting to be called for the purpose of raising moneys for the support of the poor, when a proposition to that effect shall not have been acted on at the annual town meeting; or for the purpose of deliberating in regard to the institution or defence of suits, or the raising of moneys therefor. 1 R. S. 341; p. 331, 2d ed. 7 Wend. 488.

To demand and receive books and papers of justices of the peace.] In case of the removal of a justice of the peace from the town in which he was elected, either before or after his term of office expires, it is provided by statute, that the town clerk shall be entitled to the possession of all the books and papers relating to any cause or matter heard by

him, or commenced by him. In case any justice shall die, or his office in any way become vacant, and the books and papers relating to his official matters shall fall into the hands of any other person, it becomes the duty of the town clerk to demand and receive the same; and if the same are withheld, he may proceed to obtain them in the manner provided by the fifth article, of the sixth title, of the fifth chapter of the first part of the Revised Statutes. 2 R. S. 271; p. 197, 2d ed., and 1 R. S. 125; p. 114, 2d ed., 336, 4th ed.

To give notice of reception of list of lands sold for taxes.] It is made the duty of every town clerk to whom copies of the list of lands liable to be sold for taxes shall have been delivered, to give notice at the opening of every town meeting for the election of town officers, that such lists are deposited in his office, and that they may there be seen and examined at all reasonable hours free of expense. 1 R. S. 408; p. 397, 2d. ed.

To administer oath to town officers.] The oath of office of any town officer, except justices of the peace and commissioner of deeds, may be subscribed and sworn before the town clerk of the town in which such officer shall be elected; such oath shall be administered and certified without fee or reward. *Laws of 1838, chap. 172, p. 133.*

To draw jury to re-assess road damages.] By the statute passed in 1837, it was made the duty of town clerks to draw the jury provided for by that act, whenever a re-assessment of road damages is required to be made. *Laws of 1847, chap. 455, p. 580.*

By the same act, town clerks are allowed the

sum of fifty cents for drawing and certifying such jury. By the Revised Statutes, he is allowed such compensation for his services in behalf of the town, as the board by whom his account shall be audited shall deem just.

To file and enter chattel mortgages.] By the Laws of 1849, chap. 69, p. 105, it is provided as follows:

“§ 1. It shall be the duty of the clerks of the several towns and counties in this state, in whose offices chattel mortgages are by law required to be filed, to provide proper books, at the expense of their respective towns, in which the names of all parties to every mortgage, or instrument intended to operate as a mortgage of goods and chattels, hereafter filed by them or either of them, shall be entered in alphabetical order, under the head of mortgagors and mortgagees, in each of such books respectively.

§ 2. It shall be the duty of the said several clerks to number every such mortgage or copy so filed in said office, by endorsing the number on the back thereof, and to enter such number in a separate column in the books in which such mortgages shall be entered, opposite to the name of every party thereto, also the date, the amount secured thereby, when due, and the date of the filing of every such mortgage.

§ 3. The said several clerks for services under this act, shall be entitled to receive therefor, the following fees: for filing every such mortgage or copy, six cents; for entering the same in books as aforesaid, six cents.”

They are also allowed for certified copies of the

same, at the same rate of compensation as is allowed to county clerks for copies of records.

By the laws of 1833, chap. 279, p. 402, the duty of filing such papers is devolved upon the register of the city and county of New-York, and also upon the clerk of the city and county of Albany.

Not to allow chattel mortgages to be taken from files.] It is supposed by some, that when a chattel mortgage expires, or when the mortgagee demands the same, that it is the duty of the town clerk to deliver the same to the mortgagee. There is no such duty imposed upon the clerk; on the contrary he has no authority to allow the mortgage to be taken from the files of his office. Creditors have an interest in knowing what property is, or has been incumbered, so have sheriffs, constables and other officers of the county. The mortgagor himself, frequently has a deep interest in having the mortgage remain on the files as a matter of evidence. Such papers ought never to be taken from the office of the clerk, unless in obedience to the mandate of the courts, and when used in court should be returned to their proper place on file without delay.

Fees.] Whenever it becomes necessary to associate the town clerk with the supervisor and town superintendent in the erection or alteration of a school district, the clerk is entitled to one dollar and twenty-five cents per day for his services. He is also entitled to one dollar and twenty-five cents per day as clerk of the town meeting. For making an entry of strays, he is entitled to six cents each for all neat cattle and horses, and three cents for

each sheep, to be paid by the person causing such entry to be made. For filing and entering a certificate of marriage he is entitled to twenty-five cents, and ten cents for a copy of the certificate.

They are also entitled to such compensation for other services in the line of their duty, including the service rendered as clerk of the town superintendent, as the board whose duty it is to audit such accounts shall see fit to allow.

To deliver lists to highway commissioners.] The town clerk is required to deliver the lists filed by the overseers of highways, to the highway commissioners of the town, and when such lists have undergone the requirements of law at the hands of the highway commissioners, it is the duty of the town clerk to file such lists in his office.

To file orders discontinuing highways and appointing referees.] When an order has been made discontinuing a highway, the same must be filed and recorded by the town clerk, and a copy of such order must be posted by him in the same manner as copies of orders altering or laying out highways. The certificate and other papers relating thereto must be filed in his office. He should file and record all orders made for the appointment of referees upon road appeals, relating to roads within his town, and all orders and decisions made by such referees, relating to such roads. *Laws of 1847, chap. 455.*

For the duty of the town clerk in regard to the mode of drawing a jury upon the re-assessment of road damages, and the several steps to be taken by him in relation to such re-assessment, the read-

er is referred to the succeeding chapter upon the duties of highway commissioners.

To file certificate of encroachment.] Whenever a jury, by their verdict have found that an encroachment exists upon any highway, and a certificate of such finding shall have been made and presented to the town clerk, it becomes his duty to file the same.

Town houses.] In the purchase of sites for town houses, and in the erection of such houses, the town clerk is associated with the supervisor and justices of the peace. They are entitled to control the same. *Laws of 1847, chap. 197, p. 190.*

The town clerk is one of the members of the board of town auditors. (See hereinafter the chapter upon town auditors.)

Marriage certificates.] Every marriage certificate signed by a magistrate, if presented to the clerk of the city or town where the marriage was solemnized, or to the clerk of the city or town where either of the parties reside, within six months after such marriage, must be filed by such clerk, and entered in a book to be provided by him, in the alphabetical order of the names of both the parties, and in the order of time in which such certificate is filed.

Every such certificate signed by a minister, may also be filed and recorded in like manner, if there be endorsed thereon or annexed thereto, a certificate of any magistrate residing in the same county with such clerk, setting forth that the minister by whom such certificate is signed, is personally known to such magistrate, and has acknowledged

the execution of the certificate in his presence ; or that the execution of such certificate, by a minister or priest of some religious denomination, was proved to such magistrate, by the oath of a person known to him, and who saw the certificate executed.

The entry of every such certificate must specify,

1. The names, and places of residence of the persons married :

2. The time and place of marriage :

3. The name and official station of the person signing the certificate : and,

4. The time when the certificate was filed. 2
R. S. 323, 4th ed.

It is the duty of the town clerk of each of the towns in this State, to whom the reports of the births, marriages and deaths may be delivered according to the act passed in 1847 and the amendments in 1853, within fifteen days after the receipt thereof, to record the same in a book to be provided by him for that purpose, and to transmit a copy thereof, or an abstract thereof in such form as shall be prescribed by the secretary of State, to the county clerk or city inspector.

To keep papers, &c., of town superintendent.] It is made the duty of the town clerk of each town, to receive and keep all reports made to the town superintendent from the trustees of school districts; and of the books and papers belonging to the town superintendent, when required, and to file them in his office. To receive all of his estimates and apportionments of school money, and record the same in a book to be kept for that purpose, and to

notify the town superintendent upon receiving notice from the county clerk that he has not made his annual report, for the purpose of making such report. *Laws of 1847, chap. 480, sec. 32, page 689.* By the 26th section of the same act, he is required to file and record in his office, the annual account of the town superintendent relating to the expenditure of school moneys.

The office of town clerk is one of much responsibility. In common with other public officers, he should bring to the discharge of his duty, intelligence, industry, promptness, ability and integrity.

Liabilities.] He is not only liable to indictment for a wilful neglect of his known duty, but is answerable in a civil action to a party who may have sustained damage by his wrongful neglect of duty. *Lorillard v. The Town of Munro*, 12 Barb. 161. He is in no sense a judicial officer. If his duties were in any respect judicial, no civil action could be maintained against him for the neglect of such duties. *Willson v. Mayor, &c., of New York*, 1 Denio, 595. *Weaver v. Devendorf*, 3 id. 117. He cannot escape responsibility in a civil action on the plea that he is the agent of the town, at least such is the law in the State of New-York. 12 Barb. 161. Great care should be observed in the filing and preservation of papers that may come into his hands, and in noting and certifying the day and the hour in which such papers are received. As regards liens and encumbrances affected by papers that may be filed, *time* frequently becomes a very material matter.

The title to a vast amount of property in the State of New-York, is affected by the filing and registering of chattel mortgages. Hence it becomes important that they should not only be filed, but preserved, and so arranged that mistakes may not occur in searching for the same.

That the reader may see with what strictness such officers are held accountable, I have deemed it advisable to insert a case which occurred in a sister State, where *deeds* are recorded in the office of the clerks of towns, instead of county clerks offices. It is the case of *Lyman v. Winsor*, 24 *Vt.*, (1 *Deane*,) 575. The plaintiff in an action against the town and town clerk, for a breach of official duty, set forth in his declaration, the averment in substance that the town clerk being inquired of by the plaintiff at the time of their negotiation, (the negotiation being with the town clerk for the purchase of certain lands,) whether there was any incumbrance of record upon the land which he was about to purchase, and being requested, if there was, to show the record of it to the plaintiff, neglected and refused to show the record, and did not disclose the fact that such incumbrance existed, but concealed the same. The inquiring and request of the plaintiff being alleged to have been addressed to the defendant in his official capacity, and his conduct which ensued being also alleged in the same character, it was held that the facts alleged were sufficient to enable the plaintiff to recover. And where it was further alleged, that although the defendant knew the plaintiff to be ignorant of the incumbrance, he concealed the

fact of its existence, furnishing no clue or guide by which the record of it might be discovered, it was held that an official neglect and violation of duty were sufficiently alleged, and that the additional averments that the plaintiff was thus induced to complete his purchase, believing the land to be unincumbered, when in fact it was incumbered, whereby the plaintiff sustained a heavy loss, stated a legal cause of action against the town clerk. *Id.*

For the several forms to be used by the clerk, he will refer to the forms under the several chapters relating to the duties of commissioners of highways, town superintendent, overseers of the poor, town auditors, &c.

CHAPTER IV.

OF JUSTICES OF THE PEACE.

SECTION 1. How chosen and tenure of office.

2. General powers, duties and privileges other than those of a judicial character.

SECTION 1. HOW ELECTED AND TENURE OF OFFICE.

Prior to 1826, justices of the peace held their offices by appointment. By an amendment of the constitution of 1821, which was approved and ratified in 1826, the office of justice of the peace became elective. That amendment provided as follows: The people of this State in their several towns, shall at their annual election, and in such manner as the legislature shall direct, elect by ballot their justices of the peace, and the justices

so elected in any town, shall immediately thereafter meet together, and in presence of the supervisor and town clerk of the said town, be divided by lot into four classes, of one in each class, and be numbered one, two, three, and four; and the office of number one shall expire at the end of the first year, of number two at the end of the second year, of number three at the end of the third year, and of number four at the end of the fourth year, in order that one justice may thereafter be annually elected.

Term of office four years.] The constitution of 1846, declares that the electors of the several towns, shall, at their annual town meeting, and in such manner as the legislature may direct, elect justices of the peace, whose term of office shall be four years, except when elected to fill a vacancy, or on the erection of a new town. In case of an election to fill a vacancy occurring before the expiration of a full term, they shall hold for the residue of the unexpired term.

Four justices in each town.] Under the foregoing constitutional powers, the legislature has provided for the election of four justices of the peace in each town, to be divided into four classes, one of which must be elected annually in the manner hereinafter described.

On erection of a new town, to be elected at next general election.] Whenever a new town is erected, an election for justices must be held at the next general election thereafter, unless a special election has been directed by law.

Justices residing within a new town, to be justices

thereof.] If there be one or more justices then residing in such new town, they shall be deemed justices thereof, and shall hold their office according to their respective classes; and only as many justices shall be chosen as shall be necessary to complete the number of four for such town.

Notice of meeting to determine classes.] After the election of justices in such new town, the supervisor thereof, shall, within six days after the completion of the canvass by the county canvassers, give notice in writing, to the justices elected and to the town clerk, of the time and place where he will meet them, to determine by lot the classes of such justices; which notices shall be served at least six days, and not more than twelve, previous to the time appointed therein for such meeting.

Classes how determined.] At the time and place so appointed, the supervisor and town clerk shall cause to be written on separate pieces of paper, as near alike as may be, the numbers one, two, three, four, if there shall have been four justices elected, and shall cause them to be rolled up as nearly alike as may be, and deposited in a box. The persons elected justices shall severally draw one of the said pieces of paper, and shall be classed according to the number written on the paper so drawn by him, and shall hold his office for such number of years, either one, two, three or four, as shall correspond with such number so drawn.

If less than four justices shall have been chosen, then ballots shall be prepared as above directed, with numbers written thereon, to correspond with the numbers of the classes which shall be vacant,

and each person elected, shall, in like manner, proceed to draw one of the said ballots, and shall be classed according to the number so written on the ballot drawn by him, and shall hold his office according to such number.

Neglect to attend, &c.] If any person elected a justice shall neglect to attend to such drawing, the supervisor shall draw for him. If the supervisor be absent from his town, or unable to serve, or his office be vacant, the town clerk shall give the notice herein required, and perform the duties enjoined on such supervisor.

Certificates of drawing.] Duplicate certificates of such drawing, and of the result thereof, shall be made, and certified by the supervisor and town clerk, or such one of them as shall attend the same, one of which shall be filed with the town clerk and the other with the county clerk, and shall be recorded by the said clerks in the books in which the canvasses of votes shall have been recorded, and shall be conclusive evidence of the respective classes, to which the persons so elected justices, belong.

When more than four justices may hold their offices.] If by the erection of a new town, or the annexing of a part of one town to another, there should at any time be more than four justices residing in any town, they shall notwithstanding hold and exercise their offices in the town in which they reside, according to their classes respectively; but on the expiration of the term of office of two or more justices, being in the same class, only one person shall be elected to fill the vacancy in such class.

Proceedings when number reduced.] Whenever, by the erection of a new town or the annexing a part of one town to another, any town shall be deprived of one or more justices, by their residence being within the part set off, the inhabitants of such town, shall, at the next annual election, supply the vacancy so produced in the classes to which such justices may belong, and if two or more justices be elected, the same proceedings shall be had, as before directed, to determine their respective classes.

Justices to supply vacancies.] Whenever one or more justices of the peace shall be elected in any town in this state, to supply a vacancy or vacancies at the time existing, or in any new town, such justice or justices may take the oath of office and forthwith enter upon the duties thereof. 1 R. S. 111.

In 1833, the legislature provided that elections for justices of the peace, should be held at the same time, and conducted in the same manner, as is provided for the election of supervisors and other town officers, required to be elected by ballot.

That act made further provisions as follows:

Town clerk to transmit certificate of election to county clerk.] The clerk of every town meeting, at which an election for justice of the peace shall have been had, shall, within ten days thereafter, transmit to the clerk of his county, a certificate of the result of such election, under his hand, which shall be evidence of the facts therein certified.

Justices when to enter on their duties.] The persons so elected justices of the peace, shall enter upon the duties of their respective offices on the first day of January next succeeding their election; and in case more than one justice shall be elected in any town at the same election, their term of office shall be determined by lot, in the manner provided by law, before the commencement of such term.

Classification.] When two or more persons shall be elected to the office of justice of the peace at any annual town meeting, the one of whom shall be an incumbent of the office for a term not then expired, such incumbent shall be deemed elected for the regular term of four years, which will commence on the first day of January next following such election.

Ballots how to be written.] When at any such town meeting, except the first election in a new town, two or more persons are to be elected to the office of justice of the peace, it shall be lawful for each of the electors not voting for a person who may then be an incumbent of the office, to designate on his ballot the person intended for the regular term of four years, which will commence on the first day of January then next following, by the words, or words and figures, "longest term," "four years," or "4 years;" and the person having the greatest number of votes, without any reference to such designation, shall be deemed duly elected.

Elected for four years.] The person elected and having the greatest number of such designations, shall be deemed elected for the regular term of four years.

Duty of presiding officers.] The presiding officer or officers at any annual town meeting at which justices of the peace shall be elected, shall determine whether any, and what person, in pursuance of the foregoing sections, has been elected for the regular term of four years; which determination shall be made at the same time, and with the like force and effect as he or they may determine what persons are elected to the office of justice of the peace; and such determination shall be entered in the minutes of the proceedings of the meeting, and shall be publicly read, and shall be deemed notice of the result, in the same manner as is now provided by law in relation to the canvass.

Determination by lot.] Where no person shall be elected for the regular term of four years in pursuance of either of the preceding sections, the classes of all the persons elected to the office of justice of the peace, at any such annual town meeting, shall be determined by lot, within the time and manner now prescribed by law.

Vacancies.] Where one person shall have been elected for the regular term, in pursuance of the foregoing provisions, the other person or persons elected justices of the peace, shall be deemed elected to fill the existing vacancy or vacancies; and in case of more than one existing vacancy, the classes of the persons elected to fill the same shall be determined by lot, within the time and in the manner now prescribed by law. 1 R. S. 344. *Laws of 1833, chap. 270.**

* The constitution withholds from the legislature the power of providing for the election of justices of the peace except at an annual town election. 2 Hill, 369.

Oath of office.] The official oath of a justice of the peace must be taken before the clerk of the county for which he was elected.

Must be a resident and elector.] He must be a resident and elector of the town for which he is chosen.

How removed.] He can be removed from office by the supreme court, upon charges preferred, of which he is entitled to notice.

SECTION 2. GENERAL POWERS, DUTIES AND PRIVILEGES,
OTHER THAN THOSE OF A JUDICIAL CHARACTER.

To preside at town meetings and preserve order.] It is made the duty of the justices of the peace of each town, to attend every town meeting held therein; such justices as may be present are required to preside at such meeting, and to see that the same is regularly and orderly conducted; while so presiding they are clothed with like authority to preserve order, enforce obedience, and to commit for disobedience, as is possessed by the board of inspectors at a general election. 1 R. S. 342. *Parsons v. Brainerd*, 17 Wend. 525.

Justices to appoint town officers when not elected.] If any town shall neglect at its annual town meeting to choose its proper town officers, or either of them, it is made the duty of any three justices of the peace of such town, to appoint such officers by warrant under their hands and seals. 1 R. S. 347. (See form for such appointment, Appendix, No. 25.)

Warrant to be filed in town clerk's office.] The justices making such appointment are required forthwith

to file such warrant in the town clerk's office of their town.

Member of board of town auditors.] He is a member of the board of town auditors. His duties as a member of that board are mentioned at length at Chapter XIII.

Appeals from assessment of damages for laying out roads.] He is also required upon an appeal from the assessment of damages for laying out, altering, or discontinuing roads, to issue a summons for a jury for the re-assessment of such damages, and to attend to the drawing and swearing of such jury, and to attach his certificate to the verdict. *Laws of 1847, chap. 455, sec. 5 and 6. (See form for summons, oath and certificate, Appendix, No. 158.)*

To summon jury in case of encroachments upon highways.] In case of encroachments upon highways, upon the application of the highway commissioners or some one of them; any justice of the peace of the county in which the road is situated, may issue a precept, requiring any constable of the town to summon twelve freeholders thereof, to meet at a certain day and place, to be specified in such precept, and not less than four days after the issuing thereof, to inquire into the premises. On the day specified in the precept, the justice must attend and swear the jury, and such witnesses as may be produced by either party. The jury having ascertained and certified the damages, if they remain unpaid for ten days, it is the duty of the justice to issue his warrant for the collection thereof. 1 R. S. 522. 7 Wend. 300; 22 Wend. 132.

May accept resignation of town officers.] For sufficient cause shown, any three justices of the peace may accept the resignation of any town officer of the town. Notice whereof must forthwith be given to the town clerk. 1 R. S. 348, 4th ed., 657. (*For form of acceptance of resignation, see Appendix.*)

Power to appoint town officers to fill vacancies.] Justices of the peace have power to appoint all town officers to fill vacancies, except supervisor, overseer of the poor, collector, overseer of highways, and justices of the peace. 1 R. S. 348; 4th ed., 657. 18 Wend. 516. (*See form for appointment, Appendix, No. 25.*)

Laying out private roads, justice to summon jury.] Under the statute relating to the laying out of private roads, it is made the duty of the justice of the peace of the town, on receiving the certificate from the commissioners of highways that a jury has been drawn, to issue his summons to one of the constables of the town, directing him to summon the persons named in such certificate. The justice must designate the time and place in the summons, at which the persons to be summoned shall meet. Upon their appearance the justice draws by lot six of the persons attending to serve as a jury. He swears the jury, certifies their verdict, and delivers the same to the commissioner of highways. *Laws of 1847, chap. 455, secs. 5, 6, 10. Laws of 1848, chap. 77.* (*For form of summons, oath to jurors and witnesses, and certificate, see Appendix, No. 168-170.*)

It is equally the duty of justices of the peace, as well as that of the supervisor and commissioner

of highways, whenever the woods in any town shall be on fire, to order such and so many of the inhabitants of the town, liable to work on the highways, and residing in the vicinity of the place where such fire shall be, as they severally shall deem necessary, to repair to the place where such fire shall prevail, to assist in extinguishing the same or in arresting its progress. 1 R. S. 697; 4th ed., vol. 2d, 107. See Chap. I.

Whenever any child shall be found begging for alms, or soliciting charity from door to door, or in any street or public place, it becomes the duty of any justice of the peace of the town, upon complaint and proof thereof, to commit such child to the county poor house, or other place provided for the support of the poor. 1 R. S. 633; 4th ed., vol. 2d, 35.

Any two justices of the peace of the city or town, when any lunatic or mad person shall be found, may upon their own view or opinion, or upon the information or oath of others, whenever they deem it necessary, issue their warrant for the apprehension and confinement of such lunatic or mad person. 1 R. S. 625.

Under the statutes for the support of the poor, justices of the peace are required to make such an order for the temporary relief of such poor persons as may come under their jurisdiction, as the circumstances of the case shall require, but not to exceed ten dollars in any one case; and their accounts for any personal or official services in relation to the poor, must be audited and settled by the board of supervisors. 1 R. S. 625; *ib.* 628.

Power is conferred upon any two justices of the peace of a town, to sign a license for the exhibition within their town, for gain or profit, of any painting, or any animal, or other natural or artificial curiosity, provided such paintings or curiosities do not come under the denomination of idle shows, acts or feats, which common showmen, mountebanks or jugglers usually practice or perform. 1 R. S. 660; 4th ed., vol. 2d, 71.

It is made the duty of a justice of the peace, to order the owner or possessor of any dog that shall attack any person peaceably travelling on a highway, or any horse in a carriage, or upon which any person shall be mounted, to kill such dog, whenever complaint of such kind is made to him, of the truth of which he shall be satisfied. 1 R. S. 706; 4th ed., vol. 2d, 113.

It is also made his duty to issue a summons for a jury, whenever application is made for opening ditches, for draining swamps, marshes and low lands; to administer oaths to such jury; to attend upon their deliberations, and file the maps and inquisition after being certified by him, in the town clerk's office of the town wherein the premises are situated. 2 R. S. 548; 4th ed., vol. 2, 780. *Laws of 1851, chap. 3, 45.*

Justices of the peace may solemnize marriage.

When solemnized by a magistrate, no particular form shall be required, except that the parties shall solemnly declare, in the presence of the magistrate or the attending witness or witnesses, that they take each other as husband and wife. In

every case, there shall be at least one witness, beside the magistrate, present, at the ceremony.

It shall be the duty of every magistrate, required to solemnize a marriage, to ascertain,

1. The christian and surnames of the parties; their respective places of residence; and that they are of sufficient age to be capable in law of contracting marriage.

2. The names and places of residence of two of the attesting witnesses, if more than one be present; and if not, the name, and place of residence of such witness.

He shall enter the facts so ascertained, and the day on which such marriage is solemnized, in a book to be kept by him for that purpose.

If either of the parties, between whom the marriage is to be solemnized, shall not be personally known to him, the magistrate shall ascertain to his satisfaction the identity of the respective parties.

Every magistrate who shall solemnize a marriage, where either of the parties, within his knowledge, shall be under the age of legal consent, or an idiot or lunatic; or to which, within his knowledge, any legal impediment exists, shall be deemed guilty of a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court by which he shall be tried.

Whenever a marriage shall have been solemnized within this State, pursuant to these provisions, the magistrate by whom the marriage was solemnized, shall furnish on request, to either party, a certificate thereof, specifying,

1. The names and places of residence of the parties married, and that they were known to such magistrate, or were satisfactorily proved by the oath of a person known to him, to be the persons described in such certificate, and that he had ascertained that they were of sufficient age to contract marriage.

2. The name and place of residence of the attesting witness or witnesses : and,

3. The time and place of such marriage.

The certificate shall also state, that after due inquiry made, there appeared no lawful impediment to such marriage, and it shall be signed by the person making it. 1 R. S. 140. (*See form of marriage certificate, Appendix, No. 183.*)

Justices of the peace are clothed with the same power to take acknowledgments of deeds, and other instruments in writing, that was formerly conferred upon commissioners of deeds in towns. Such power may be exercised at any place in the county in which they reside. 1 R. S. 756; 4th ed., 2d vol. 162. *Laws of 1840, chap. 238.* (*See forms for acknowledgments, Appendix, Nos. 93 to 108.*)

The duties of justice of the peace under the poor laws, are mostly of a judicial character. Reference is made to the same in the section upon that subject.

Town houses.] The justice is associated with the supervisor and town clerk, in the purchase of sites for town houses, in superintending their erection, and in the care, custody and control of the same. By the Laws of 1847, chap. 197, in regard to town houses, it is provided as follows:

§ 1. The electors of any town of this state in which there shall not be a town house, at any annual town meeting, may, by resolution, vote a sum of money for the purchase of a site for, and the building of a town house, not exceeding in number of dollars, twice the number of electors in said town; provided that a notice of intention to propose such a resolution shall have been posted, within fifteen days of, and not less than ten days preceding said meeting, in five of the most public places in said town.

§ 2. Upon proper representation of the action of any town under the first section of this act, the board of supervisors of the county in which such town is situated, may cause the sum so voted, to be collected with the other expenses of said town; or may require the question to be again submitted to the electors of said town at the next annual town meeting.

§ 3. Conveyances for sites shall be made to the towns; sites shall be purchased and houses erected by the supervisor, town clerk and the justices of the town, and the houses shall be controlled by the supervisor, town clerk and the justice of the peace residing nearest the same; and the electors may from time to time, vote such sum as may be necessary to keep any town house in repair and insured.

§ 4. The board of supervisors in any county, may in their discretion, cause any money or any portion thereof, voted by towns before the passage of this act, for building town houses, to be raised in said towns for such purpose.

Fees.] He is allowed for his attendance at town meetings, one dollar and twenty-five cents per day, and one dollar for his services under the act for draining swamps and low lands.

<i>Fees in criminal proceedings.</i>] For a warrant in criminal cases, (and no justice is obliged to issue any warrant on complaint for assault and battery; unless the person making such complaint and requiring the warrant shall pay the fee therefor,)	\$0 19
For a bond or recognizance,	25
Commitment for want of bail,	19
For a venire to summon a jury before a court of special sessions,	25
Swearing such jury,	25
Trial fee or attendance,	1 00
Warrant of commitment on conviction,	25
Drawing a record of conviction and filing the same,	75

But all such charges in any one case must not exceed five dollars.

Taking security from any person to prosecute a certiorari upon any conviction made by a court of special sessions,	\$0 25
For making a return to any such certiorari, to be paid by the county,	2 00
For endorsing a warrant issued from another county,	12½
For attending the courts of oyer and terminer and sessions, for each day,	2 00
Travel fee for each mile in going and returning,	06

Justices of the peace are allowed such other compensation for services performed by them, and not specially provided for, as the board auditing their accounts may deem proper to allow.

Forms.] For the several forms to be used by the justice under the highway act, see the *Appendix*, from No. 109 to 182 as the same occur among the other highway forms. Forms under the poor laws to be used by the justice see *Appendix*, from 42 to 78. Each form is referred to in the general index.

CHAPTER V.

OF ASSESSORS.

SECTION 1. How chosen or appointed.

2. Of the property liable to assessment, and the general powers and duties of assessors.
3. Of the assessment of taxes on incorporated companies.
4. Of the enrolment of persons subject to military duty, and the assessment and collection of commutations.

SECTION 1. HOW CHOSEN OR APPOINTED.

Must be three assessors.] There must be three assessors in each town, one must be elected annually. When, by the erection or formation of a new town, it becomes necessary to elect three, they are to be classified in the same way as highway commissioners are classified. (*Chap. VIII.*) *Laws of 1845, chap. 180.*

Who may appoint.] In case of vacancy by death, removal, resignation, neglect to qualify, or refusal to serve, any three justices of the peace, or any

two and the supervisor, may appoint by warrant, in writing under their hands, assessors to fill such vacancy. *Laws of 1847, chap. 455.* A Quaker is exempt from service as an assessor.

Ex-officio fence viewers.] The assessors and commissioners of highways are, by virtue of their office, fence viewers of their town.

SECTION 2. OF THE PROPERTY LIABLE TO BE ASSESSED,
AND THE GENERAL POWERS AND DUTIES OF ASSESSORS.

All lands, and all personal estate within this State, whether owned by individuals or corporations, is liable to taxation, subject to the exceptions hereinafter mentioned.

The estate of a corporation which is taxable as personal property, is only that portion of its capital which is not invested in real estate. But the capital of a corporation embraces the whole of its stock paid in or secured to be paid, whether it is invested in real or personal property.

Principle of taxing corporations.] The principle of the Revised Statutes, in regard to the taxation of corporations, is to tax the real estate of each corporation, except as to canal, turnpike, and bridge companies, upon its *actual* value, for the benefit of the inhabitants of the town and county where it is situated, in the same manner as the property of individuals is taxed, and to tax the residue of its capital, after deducting the *cost* of its real estate, as personal property, for the benefit of the inhabitants of the town and county where the financial concerns of the corporation are carried on. *Utica Cotton Manuf. Co. v. The Supervisors of Oneida,* 1

Barbour Ch'y Rep. 432. *Bank of Utica v. City of Utica*, 4 *Paige*, 399.

The term land defined.] The term "land" as used in this chapter, is to be construed to include the land itself, all buildings and other articles erected upon or affixed to the same, all trees and under-wood growing thereon, and all mines, minerals, quarries and fossils, in and under the same, except mines belonging to the State ; and the terms "real estate" and "real property," whenever they occur in this chapter, are to be construed as having the same meaning as the term land, thus defined.

Personal property defined.] The terms "personal estate," and "personal property," whenever they occur in this chapter, are to be construed to include all household furniture, moneys, goods, chattels, debts due from solvent debtors, whether on account, contract, note, bond or mortgage, public stocks, and stocks in moneyed corporations ; also such portions of the capital of incorporated companies liable to taxation on their capital, as shall not be invested in real estate.

The question what shall be deemed personal estate, *in the possession or under the control of an agent*, within the meaning of the statute, has recently undergone judicial construction. In the case of *Lord v. Arnold*, (18 *Barbour*, 104,) it was held that when one is the agent of another for the sale of real estate in his vicinity, and for making contracts for sales, and for receiving the consideration agreed to be paid by the purchasers, and as such agent has in his possession contracts for the lands executed by his principal who resides in another

place, and by the several purchasers of the land, the amount owing by the purchasers on such contracts is not subject to taxation against the agent, as personal estate *in his possession or under his control* as such agent.

Such contracts pertain to and follow the owner wherever he may be; such is the general rule of law, the property itself accompanies the owner, the evidence of that property may be some where else. *Story's conflict of Laws*, 309 to 314.

Property exempt.] The following property is exempt from taxation :

All property which is declared exempt by the constitution of this State, or the constitution of the United States :

All lands belonging to this State, or the United States :

Every building erected for the use of a college, incorporated academy, or other seminary of learning; every building for public worship; every school house, court house and jail; and the several lots on which such buildings are situated, and the furniture belonging to the same :

Every poor house, alms house, house of industry, and every house belonging to a company incorporated for the reformation of offenders, and the real or personal property belonging to or connected with the same :

The real and personal property of every public library :

All stocks owned by the State, or by literary or charitable institutions :

The personal property of every minister of the

gospel, or priest of any denomination, and the real estate of such minister, or priest, when occupied by him, provided such real and personal estate do not exceed the value of one thousand five hundred dollars, and all property exempt by law from execution. If the property of a minister, or priest, exceed fifteen hundred dollars, that sum is to be deducted from the valuation of his property and the residue is liable to taxation.

Lands sold by the State, though not conveyed, are to be assessed in the same manner as if actually conveyed.

The owner or holder of stock in any incorporated company liable to taxation on its capital, is not to be taxed as an individual for such stock. 1 R. S. 388; 4th ed., 715.

When assessors act judicially.] Assessors in determining the value of taxable property, the value of which is not sworn to as authorised by law, act judicially. *Weaver v. Devendorf*, 3 Denio, 117. *Prosser v. Secor*, 5 Barb., 607.

Responsible for assessing exempt property.] They must be careful however, to acquire jurisdiction. They have no authority to enter upon the assessment roll the name of any person whose property is by law exempt from taxation, or to impose an assessment thereon; and if they assess property exempt from taxation by statute, they cease to be judges and are responsible for the consequences. In determining whether they have jurisdiction or not, in a given case, they do not act judicially. No officer can acquire jurisdiction by deciding that he has it. 5 Barb. 612. 7 Hill, 261. 16 Barbour, 244.

Funds and securities held by the courts, are personal property of the persons owning them, and should be assessed to such persons as part of their personal property, at their respective places of residence. *Matter of Kellinger*, 9 Paige, 62.

Farm divided by town line to be assessed where party lives.] If a farm be divided by a town line, the whole of it is to be assessed in the town in which that part of it is upon which the owner's residence is located; if unoccupied, each part to be assessed in the town where it lies. *Saunders v. Springsteen*, 4 Wend. 429.

Trespass cannot be maintained for a levy on account of an over valuation in the assessment. The party assessed must apply to the assessors in time for a reduction. *Ontario Bank v. Bunnell*, 10 Wend. 186.

Every person is entitled to be assessed in the town or ward where he resides when the assessment is made, for all lands then owned by him within such town or ward, and occupied by him, or wholly unoccupied.

When lands assessed as non-resident.] Land occupied by a person other than the owner, may be assessed to the owner or occupant, or as non-resident land. *Laws of 1851, chap. 176.*

Unoccupied lands not owned by a person residing in the ward, or town, where the same are situated, are denominated "lands of non-residents."

Personal estate where to be assessed.] Every person must be assessed in the town or ward where he resides when the assessment is made, for all personal estate owned by him, including all personal

estate in his possession or under his control as agent, trustee, guardian, executor, or administrator, and in no case can property so held under either of these trusts be assessed against any other person; and in case any person possessed of such personal estate, shall reside during any year in which taxes may be levied in two or more counties, towns or wards, his residence is deemed to be in the county, town or ward in which his principal business shall have been transacted; but the products of any state of the United States, consigned to agents in any town or ward of this state, for sale on commission, for the benefit of the owner, is not to be assessed to such agent. Nor are such agents of moneyed corporations, or capitalists, liable to taxation as above mentioned for moneys under their control, or in their possession, transmitted to them for the purposes of investment or otherwise. *Laws 1851, chap. 176.*

Toll bridges.] In the case of toll bridges, the company owning such bridge must be assessed in the town or ward in which the tolls are collected; and where the tolls of any bridge, turnpike or canal company are collected in several towns or wards, the company must be assessed in the town or ward in which the treasurer or other officer authorised to pay the last preceding dividend resides. 1. *R. S.* 390; 4th ed., 716.

The provisions of the Revised Statutes, and the amendments of 1851, pointing out the manner in which assessments are to be made, are so full and definite, that I have deemed it proper to transcribe and insert those sections entire.

Assessment districts.] The assessors chosen in each town or ward, may divide the same by mutual agreement, into convenient assessment districts, not exceeding the number of assessors in each town or ward.

Between the first days of May and July, in each year, they must proceed to ascertain by diligent inquiry, the names of all the taxable inhabitants in their respective towns or wards, and also all the taxable property, real or personal, within the same.

Assessment roll.] They shall prepare an assessment roll, in which they shall set down in four separate columns, and according to the best information in their power :

In the first column, the names of all the taxable inhabitants in the town or ward, as the case may be :

In the second column, the quantity of land to be taxed to each person :

In the third column, the full value of such land :

In the fourth column, the full value of all the personal property owned by such person, after deducting the just debts owing by him. (*Form of roll, Appendix, No. 27.*)

Trustee, guardian, &c.] Where a person is assessed as trustee, guardian, executor, or administrator, he shall be assessed as such, with the addition to his name of his representative character, and such assessment must be carried out in a separate line from his individual assessment ; and he must be assessed for the value of the real estate held by him, in such representative character, at its full value, and for the personal property held by him.

in such representative character, deducting from such personal property the just debts due from him in such representative character.

Lands of non-residents.] The lands of non-residents must be designated in the same assessment roll, but in a part separate from the other assessments, and in the following manner :

If the land to be assessed, be a tract which is sub-divided into lots, or be a part of a tract which is so sub-divided, the assessors must proceed as follows :

1. They must designate it by its name, if known by one, or if it be not distinguished by a name, or the name be unknown, they shall state by what other lands it is bounded :

2. If they can obtain correct information of the subdivisions, they shall put down in their assessment rolls, and in a first column, all the unoccupied lots in their town or ward, owned by non-residents, by their numbers alone and without the names of their owners, beginning at the lowest number and proceeding in numerical order to the highest :

3. In a second column, and opposite to the number of each lot, they shall set down the quantity of land therein, liable to taxation :

4. In a third column, and opposite to the quantity, they shall set down the valuation of such quantity :

5. If such quantity be a full lot, it shall be designated by the number alone ; if it be a part of a lot, the part must be designated by boundaries, or in some other way, by which it may be known.

If the land so to be assessed be a tract which is not subdivided, or if its subdivisions cannot be ascertained by the assessors, they shall proceed as follows:

1. They shall enter in their roll the name or boundaries thereof, as above directed, and certify in the roll that such tract is not subdivided, or that they cannot obtain correct information of the subdivisions, as the case may be :

2. They shall set down in the proper column the quantity and valuation as above directed :

3. If the quantity to be assessed be the whole tract, such a description by its name or boundaries will be sufficient ; but if a part only is liable to taxation, that part or the part not liable, must be particularly described :

4. If any part of such tract be settled and occupied by a resident of the town or ward, the assessors shall except such part from their assessment of the whole tract, and shall assess it as other occupied lands are assessed ; and if they can not otherwise designate such parts, they shall notify the supervisor of the town, who shall cause a survey and two manuscript maps to be made, for the purpose of ascertaining the situation and quantity of every such occupied part :

5. One of those maps shall be delivered by the supervisor to the county treasurer, to be by him transmitted to the comptroller, and the other shall be delivered in like manner to the assessors :

6. The assessors shall then complete the assessment of the tract, and shall deposit the map in the town clerk's office, for the information of future

assessors. And the expense of making such survey and maps, shall be immediately repaid to the supervisor out of the county treasury; and it shall be added by the board of supervisors to the tax on the tract, distinguishing it from the ordinary tax.

Survey of non-resident lands.] Whenever it shall be deemed necessary by the assessors of any town, to have an actual survey made to ascertain the quantity of any lot or tract of non-resident lands which is divided by the town line, they shall notify the supervisor, who shall cause the necessary surveys to be made at the expense of the town. 1 R. S. 391; 4th ed., 717.

All real and personal estate liable to taxation, shall be estimated and assessed by the assessors at its full and true value, as they would appraise the same in payment of a just debt due from a solvent debtor. They must complete their assessment rolls on or before the first day of August in every year, and make one fair copy of the same to be left with one of their number.

The notices required to be given by assessors must set forth that the assessors have completed their assessment roll, and that a copy thereof is left with one of their number at a place to be specified therein, where the same may be seen and examined by any person interested, until the third Tuesday of August; (*form of notice, Appendix, No. 184,*) and that on that day the assessors will meet at a time and place also to be specified in such notice, to review their assessments. On the application of any person conceiving himself aggrieved, it shall be the duty of the said assessors

on such day to meet at the time and place specified, and hear and examine all complaints in relation to such assessments that may be brought before them; and they are empowered, and it shall be their duty to adjourn from time to time, as may be necessary, to hear and determine such complaints; but in the several cities of this State, the notices required by this section, may conform to the requirements of the respective laws regulating the time, place and manner for revising the assessments in said cities, in all cases where a different time, place, and manner is prescribed by said laws from that mentioned in this act. (*See form of notice, Appendix, No. 28.*)

If the assessors shall wilfully neglect to hold the meeting specified in the last preceding section, each assessor so neglecting, becomes liable to a penalty of twenty dollars, to be sued for and recovered before any court having jurisdiction thereof, by the supervisor of the town, for the use of the poor of the same town; and in case of such neglect to meet for review, any person aggrieved by the assessment of the assessors may appeal to the board of supervisors, at their next meeting, who shall have power to review and correct such assessment.

Reduction of valuation how made.] Whenever any person on his own behalf, or on behalf of those whom he may represent, shall apply to the assessors of any town or ward to reduce the value of his real and personal estate, as set down in their assessment roll, it is the duty of such assessors to examine such person under oath touching the value of his or their said real or personal estate, and after

such examination they must fix the value thereof, at such sum as they may deem just, but if such person refuses to answer any question as to the value of his real or personal estate, or the amount thereof, the assessors must not reduce the value of such real or personal estate. The examination so taken must be written and subscribed by the person examined, and filed in the office of the town clerk of the town or city in which such assessment is made, and any person who wilfully swears falsely on such examination before the assessors, is deemed guilty of wilful and corrupt perjury.

Oaths.] The assessors of the several towns and wards of this state, have power to administer oaths to any person applying to them under the provisions of this act.

Assessment roll to be sworn to.] When the assessors, or a majority of them, have completed their roll, they severally appear before one of the justices of the town or city in which they shall reside, and severally make and subscribe before such justice, an oath, in the following form:

We, the undersigned, do severally depose and swear that we have set down, in the foregoing assessment roll, all the real estate situated in the (town or ward, as the case may be,) according to our best information; and that, with the exception of those cases in which the value of the said real estate has been changed by reason of proof produced before us, we have estimated the value of the said real estate at the sums which a majority of the assessors have decided to be the full and true value thereof, and at which they would ap-

praise the same in payment of a just debt due from a solvent debtor; and also that the said assessment roll contains a true statement of the aggregate amount of the taxable personal estate of each and every person named in such roll, over and above the amount of debts due from such persons respectively, and excluding such stocks as are otherwise taxable, and such other property as is exempt by law from taxation, at the full and true value thereof, according to our best judgment and belief. Which oath must be written on said roll, signed by the assessors, and certified by the justice, and shall be in place of the official certificate now required by law; and every assessor who shall swear false in taking and subscribing said oath, is deemed guilty of, and liable to the penalties of wilful and corrupt perjury.

Rolls must be delivered to supervisor before Sept. 1.] The roll thus certified, shall, on or before the first day of September in every year, be delivered by the assessors of each ward, in the city of New-York, to the clerk of the city, and by the assessors of every other town or ward, to the supervisor thereof.

The assessors in the execution of their duties, are required to use the forms, and pursue the directions which shall from time to time be transmitted to them by the comptroller.

For a wilful neglect of duty, the assessor forfeits to the State the sum of fifty dollars. 6 *Cowen*, 480.

If any assessor neglects or omits his duty, the other assessors, or either of them, must perform

such duty, and certify to the supervisor with the assessment roll, the name of the delinquent, and the cause of such omission.

Care should be used in defining non-resident land.] Great care should be observed in putting down the *numbers* or boundaries of non-resident lots; and if the assessors give a mistaken number, with a description otherwise sufficient to identify the land, the assessment is insufficient, and a comptroller's deed with such number and description is void. *Dike v. Lewis*, 4 *Denio*, 237.

Where the lot intended to be assessed is part of a tract which has a known name, and the assessment describes the lot as situated in a different tract, the assessment is void, although it contains other matter of description which, if the name of the tract were rejected, would suffice to identify the lot. *Tallman v. White*, 2 *Coms.* 66.

A common law certiorari will lie to review the proceedings of assessors, *Weaver v. Devendorf*, 3 *Denio*, 117; although on grounds of public policy the writ is usually refused. *The People v. Supervisors of Allegany*, 15 *Wend.*, 198. 1 *Hill*, 195.

To tax rents.] Under the act passed May 13, 1846, entitled an act to equalize taxation, it is made the duty of the assessors of each town and ward, while engaged in ascertaining the taxable property therein, by diligent inquiry to ascertain the amount of rents reserved in any leases in fee, or for one or more lives, or for a term of years exceeding twenty one years, and chargeable upon lands within such town or ward; which rent shall be assessed to the person or persons entitled to re-

ceive the same, as personal estate, (such rents are declared to be such for the purposes of taxation,) at a principal sum, the interest of which at the legal rate per annum, shall produce a sum equal to such annual rents. And in case such rents are payable in any other thing than money, the value of such annual rents in money is to be ascertained by the assessors, and the same assessed in like manner. *Laws of 1846, chap. 327.*

A lease for a term of thirty years, executed before that act took effect, is within the purview of the act, and the rents therein reserved are liable to taxation; although at the passage of the act the lease had less than twenty-one years to run. *Le Couteulx v. Supervisors of Erie*, 7 Barb. 249. See also 4 Barb. 9; 8 *id.* 23. 6 How. Sp. Term Rep. 116.

Power to correct.] Assessors have power to correct an assessment, (except to increase an estimate of property after the roll has been deposited with one of their number for examination,) at any time before their roll is delivered to the supervisor. *The People v. Supervisors of Westchester*, 15 Barb. 607.

Affidavit for reduction.] The affidavit presented to assessors for the purpose of procuring a reduction of an assessment, can only be sworn to before the assessors, or one of them. A justice of the peace has no authority to administer an oath in such a case. 15 Barb. 607.

The applicant for reduction must swear positively. The statute does not sanction a statement on *belief*. *Id.*

To make list of insane persons.] It is the duty of the assessors in each town and ward in the State, every year to make diligent inquiry, and ascertain with accuracy the number and names of all insane persons in the town or ward, and to make a list of the same, with the best account they can procure in each case, as to the age, general health, habits and occupation; kind, degree, and duration of insanity, and pecuniary ability of such insane person, and the pecuniary ability of the relatives liable to his support. Such list, with all the facts brought down to the latest period, must be delivered to the clerk of the county by the first day of August. *Laws of 1842, chap. 135.*

Duty in respect to enforcing the payment of taxes.] When the collector of a town or ward reports to the assessors, or one of them, that persons liable to pay taxes refuse to pay, and that no property can be found upon which to distrain, and that such persons have credits and rights in action, or other personal property, which ought to be applied in payment of the tax, the assessors may, in their discretion, make application within one year to the county or to the supreme court, to enforce the payment of such tax. *Laws of 1842, chap. 318. 1 R. S. 725; 4th ed.*

The party refusing to pay such tax, is deemed guilty of a violation of duty or misconduct, within the meaning of the statutes respecting contempts, as the same are defined at title 13, chap. 8, part 3, of the Revised Statutes; and the court upon the application of the assessor, and due proof, may proceed to enforce the payment or punish the of-

fender, in the manner there pointed out. To bring the matter before the court, an affidavit should be drawn setting forth the facts, which should be accompanied by a petition asking such relief as is deemed proper, and presented to the court.

The court, after seeing that such notices are given to the offending party as its rules require, proceeds to hear the proof, and makes such order in regard to the payment of the tax, or the punishment of the offender, or both, as is deemed just.

Tax on dogs.] A tax must be levied and collected annually, on dogs, in all the counties of this State, except the county of New-York, as follows: Upon every bitch of three months old or upwards, kept by any one person or family, two dollars; upon every additional bitch kept by the same, five dollars; upon two dogs of six months old or upwards, other than bitches, kept by one person or family, one dollar; upon every such dog more than two, kept by the same person or family, three dollars.

The assessors, at the time of making their annual assessments, must inquire and ascertain the number of dogs liable to be taxed, and enter down in distinct lists, the names of the persons owning or keeping any dog subject to the above tax, the number kept, and the amount of tax to be paid by such persons.

Owner must deliver description.] The assessors may require the owner or possessor of dogs to deliver a description in writing of every such dog; and for a neglect or refusal so to do, and for every false statement relating thereto, the party offending for-

feits five dollars, to be recovered by the supervisor of the town.

Tax how collected.] The assessors, within the time allowed by law for the completion of their assessment rolls, must make out duplicate lists respecting such dog tax, containing the names of the owners and possessors of dogs liable to taxation, and annex to such lists a direction or warrant to the collector of the town, to levy and collect the several sums in such list specified, of the persons respectively, opposite to whose names the said sums shall be written, and to pay over the same after deducting five per cent for his commissions, to the county treasurer. 1 R. S. 703; 4th ed., vol. 2, 111.

Villages.] Under the act to provide for the incorporation of villages, when the electors of a village direct a sum of money to be raised by tax, the assessors of such village are required to assess the same, and make out and complete an assessment for such tax, in the manner, as nearly as practicable, prescribed by law for making assessments by town assessors; and must deliver the same to the trustees of such village within sixty days after the meeting at which such tax was directed to be raised. *Laws of 1847, chap. 426, sec. 59.*

SECTION 3. OF THE ASSESSMENT OF TAXES ON INCORPORATED COMPANIES

All moneyed or stock corporations, deriving an income or profit from their capital, or otherwise deriving any income, are liable to taxation on their capital in the manner hereinafter mentioned. The president or other proper officer of every such cor-

poration, is required by-law, on or before the first day of July in each year, to deliver to some one of the assessors of the town or ward in which such corporation is liable to be taxed, a written statement, specifying,

1. The real estate, if any, owned by such company; the place where situated, and the sums actually paid therefor.

2. The capital stock actually paid in, and secured to be paid in, excepting therefrom the sums paid for real estate, and the amount of such capital stock held by the State and by any incorporated literary or charitable institution; and

3. The town or ward in which the principal office or place of transacting the financial business of such company is situated; or if there be no such principal office, the town or ward in which its operations are carried on.

How to assess corporations.] The assessors are required to enter all incorporated companies from which such statements shall be received by them, and the property of such companies, and the property of all other incorporated companies liable to taxation in their respective towns, in their assessment rolls in the following manner :

In the *first* column, the name of the corporation liable to taxation on its capital or otherwise, and under its name, the capital stock paid in and secured to be paid in; the amount paid for real estate then owned by such company, wherever the same may be situated, and the amount of its stock, if any, belonging to the State, and to incorporated literary and charitable institutions.

In the *second* column, the quantity of real estate owned by such company within the town or ward ; and in the *third* column, the actual value thereof estimated as in other cases ; and in the *fourth* column the capital stock of every incorporated company, (excepting manufacturing and turnpike corporations, and marine insurance companies,) paid in, and secured to be paid in ; after deducting the sum paid out for all the real estate of such company, and then belonging to it, and the amount of stock, if any, belonging to the people of this State, and to incorporated literary and charitable institutions. 1 R. S. 752, 4th ed. .

The assessors must insert the cash value, in the proper column, of all manufacturing and turnpike corporations, (to be ascertained by the assessor by the sales of the stock, or in any other manner,) deducting therefrom the items mentioned above, which value, together with that of the real estate of such corporations, forms the basis on which the tax is to be levied.

Bridge companies.] Turnpike, bridge, or canal companies, whose net annual income does not exceed five per cent. on the stock paid and secured to be paid in, are exempted from taxation.

How to secure exemption.] To secure the benefit of such exemption, some two of the officers of such company must make an affidavit of the stock paid in and secured, and the income and profits, and the total expenditures during the preceding year, of such company, and deliver the same to the assessors at the time of making their assessments.

It is sometimes difficult to determine what are moneyed or stock corporations, deriving an income or profit from their capital, or otherwise, within the meaning of the statute. A reference to some of the leading decisions under this statute, will afford a guide to the assessor in that respect.

The Buffalo Mutual Insurance Company, a corporation, possessed a fund of \$100,000, arising from premiums earned upon fire and marine policies of insurance, which were invested pursuant to an authority contained in the charter, in bonds, mortgages and stocks, so as to yield an income to be divided among its members. The company having no other capital or effects, it was held that the corporation was liable to taxation on account of such fund, as capital. Such is a moneyed corporation within the meaning of the statute concerning the assessment of taxes on incorporated companies.

Money paid in as premiums to an insurance company, not liable to be withdrawn and divided, but forming the basis of its business operations, is capital, and as such is liable to taxation. *Mutual Insurance Company of Buffalo v. Supervisors of Erie*, 4 Coms. 442.

But surplus earnings or profits, over and above the amount retained as permanent capital, *it seems*, are not liable to be taxed. *Id.*, and *Bank of Utica v. City of Utica*, 4 Paige, 399. 4 Hill, 20. 1 Coms. 371; 3 *id.* 290.

Associations formed under the general banking law are corporations, and, as such, are liable to taxation on their capital. *Bank of Watertown v. Village*

of *Watertown*, 1 *Hill*, 616. *Thomas v. Dakin*, 22 *Wend.* 9.

A moneyed corporation, liable to taxation on its capital, is to be assessed on the whole *nominal amount* paid in and secured to be paid in, after deducting expenditures for real estate, and such of the stock as the statute exempts.

No deduction for losses.] No deduction is to be made for losses of capital sustained by the corporation, nor for debts due from it. Nor can a deduction be made for such part of its capital as is invested in the stock of other corporations liable to taxation, it seems. *Farmer's Loan and Trust Company v. the Mayor, &c. of New-York*, 7 *Hill*, 261. *The People v. Supervisors of Niagara*, 4 *Hill*, 20. *Commercial Insurance Company of New-York v. Supervisors of New-York*, 18 *Wend.* 606.

Railroad companies.] Railroad companies are not taxed upon their *capital*, but upon the valuation of their real estate in the several towns through which the road passes; and it seems they are liable to be so taxed, though not in the receipt of any profits or income. 4 *Hill*, 20.

In assessing railroads, it is the duty of assessors to estimate and assess that section of the road which lies within their town, at its full and true value. In ascertaining this value, the superstructure and fixtures, and every thing annexed to the land, is to be taken into account. But whether the stock of the company is above or below par, or whether the business of the road is productive or unproductive, are questions with which the assessors have nothing to do.

Within the above rule their valuation is conclusive, however much they may err in their estimate. Like the verdict of a jury, their estimate is not to be questioned. The tax based upon the assessment is like a judicial sentence, and can only be attacked for fraud, or want of jurisdiction.

But when the assessors, after estimating and assessing that part of a railroad lying within their town, with the superstructures and erections thereon, at its full and true value, proceed to add anything to the valuation by reason of the increased cost of the road, or on account of its productiveness, so far they transcend their authority, and their act is void. *Albany and West Stockbridge R. R. Co. v Town of Canaan*, 16 Barb. 244.

As to the jurisdiction and authority of assessors, see the well considered opinion of Judge Johnson, in the case of *Prosser v. Secor*, 5 Barb. 611, 612.

The real estate of a railroad company, must be assessed in each town, at the actual value of the part lying therein, disconnected with the remainder of the road, and without reference to the income of the road. 12 Barb. 232.

Insurance companies.] Where a mutual insurance company retained a large amount of profits as a fund for the payment of losses, and was taxed therefor as a moneyed corporation, the taxation was held legal. *The Sun Mutual Insurance company, v. New-York*, 5 Sandford, 10.

For the duties of assessors, as fence viewers, see the chapter on their duties.

Assessors are allowed for each day actually and

necessarily devoted to the service of the town, the sum of one dollar and twenty-five cents.

SECTION 4. OF THE ENROLMENT OF PERSONS SUBJECT TO MILITARY DUTY, AND THE ASSESSMENT AND COLLECTION OF COMMUTATIONS.

As there have been no decisions giving construction to any part of the act in regard to the enrolment of the militia, passed April 17, 1854; and as the provisions of the act go very much into detail in relation to the duties of assessors in that respect, I have deemed it proper to insert all that part of the act relating to the duties of assessors, in the language of the statute.

Of enrolments.] § 1. The assessors chosen in each city, village, town or ward shall annually, and at the same time they are engaged in taking the assessment or valuation of real and personal property in their respective towns or wards, include in their assessment roll the names of all persons in their respective assessment districts, between the ages of eighteen and forty-five years, liable to be enrolled by the laws of the United States; they shall prepare an additional column in said roll, which shall be headed "military roll," and in such column, opposite the name of each person not exempt, shall insert "50;" and every copy required by law to be made of said assessment roll shall contain the additions herein specified; such assessors shall give notice to every person whom they shall embrace in their military roll that he is so enrolled; such notice may be given by informing said person thereof, or by giving such informa-

tion to some person of suitable age and discretion at his place of residence or business.

Notice of completion of enrolment.] § 2. As soon as the roll is completed, the assessors shall forthwith cause notices thereof to be put up in three of the most public places in the village, city, town or ward, which notices shall set forth that the assessors have made their roll of all persons liable to be enrolled according to the laws of the United States, and that the same is left with one of their number, to be designated in such notice, at some place to be specified therein, where the same may be seen and examined, by any person interested therein, until some day and place to be specified in such notice, when the said assessors will meet to review such enrolment. Such review shall be made at the same time and place the said assessors review their assessment of real and personal property.

Affidavit to be made by persons claiming to be exempt.] § 3. Any person who claims that he is not liable to military duty on account of some physical defect or bodily infirmity, or that he is exempt from the performance of military duty by any law of this state or of the United States, may, on or before the day specified in such notice, and not after, deliver to either of said assessors an affidavit stating such facts on which he claims to be exempt, or not liable to do military duty; such affidavit may be made before any person authorised to administer oaths, or before the assessors, or one of them, either of whom is hereby authorised to administer an oath for that purpose; and the assessors shall cause all such affidavits to be filed in the office of the city

or town clerk ; and if any person shall swear falsely in such affidavit he shall be guilty of perjury.

Commandants of military companies and foremen of fire companies to deliver lists of members to assessors.] § 4. The commandant of every military company and foreman of every fire company in any city, village or town in this State, shall, before the fifteenth day of June, in each year, deliver to either of the assessors of each town or ward in his company district, a list containing the names of all persons belonging to their respective companies, which list shall show the town or ward in which each member of such company resides ; such list shall not contain the name of any member of such military company, however, unless he is fully uniformed.

Assessors to determine who are exempt.] § 5. On the day the assessors meet to review their assessment of real and personal property, they shall also determine who are exempt or not liable to do military duty, and in a column prepared for that purpose in such roll opposite the name of each person not exempt, shall retain "50," and opposite the name of each person not liable to do duty, shall insert "exempt," or "not liable," as the case may be ; and opposite the name of all members of uniformed companies on such roll shall insert "u. c.," and opposite the names of all members of fire companies on such roll shall insert "f. c.," and against the name of any military officer in commission and liable to do duty, the title of his office ; and shall also insert against the names of persons between the ages of eighteen and twenty-one years, "minor ;" but if such person will have ar-

rived at the age of twenty-one years on or before the fifteenth day of November following such enrolment, then the designation last above provided need not be made.

Who to be deemed "armed and equipped," under law of United States.] § 6. Every citizen enrolled pursuant to the laws of the United States, and who shall at all times strictly comply with the act of congress, approved May eighth, seventeen hundred and ninety-two, which in the words following requires him to "provide himself with a good musket or firelock, a sufficient bayonet and belt, two spare flints and a knapsack, a pouch, with a box therein, to contain not less than twenty-four cartridges, suited to the bore of his musket or firelock, each cartridge to contain a proper quantity of powder and ball; or with a good rifle, knapsack, shot-pouch and powder-horn, twenty balls suited to the bore of his rifle, and a quarter of a pound of powder, and shall appear, so armed and accoutred and provided, when called out to exercise, or into service;" and who shall appear before the said assessors at their meeting when reviewing their enrolment in each year, and exhibit to them each and all of said arms and accoutrements, and make oath in due form of law that they have, bona fide, provided and continually keep the same for the purposes specified in said act of congress, and that they have performed at least one day's duty under the command of the proper officer, at a regular parade in such year, shall have placed opposite to his name, by the assessors, the words "armed and equipped;" and every person who shall swear

falsely under such oath, shall be deemed guilty of perjury.

Assessors to make and file lists of persons exempt.]

§ 7. The said assessors shall, at the time they shall meet to review their enrolment, make a certified list of the names of all persons whom they shall determine to be exempt, or not liable to do military duty, and shall immediately file the same in the office of the clerk of the city, town or ward, in which they reside, for the future examination and guidance of the assessors of said city, town or ward.

Assessors to verify roll and deliver to supervisor.]

§ 8. When the said roll shall be completed as aforesaid, the assessors shall sign the same, and shall attach thereto an affidavit substantially as follows :

“ The undersigned, assessors of the town of , in the county of , being severally sworn, say that they have made strict and diligent inquiry to ascertain the names of all persons required to be enrolled, as liable to military duty, by the laws of the United States, residing in said town, village or ward of ; that the roll hereto annexed is, as near as these deponents can ascertain, a correct roll of all persons residing in said town or ward, who are liable to be enrolled.” The said affidavit may be taken before any officer authorized by law to take affidavits, whose duty it shall be to take the same without fee or reward.

The said assessors shall then deliver said roll, so embodied in the assessment roll of the town or ward, to the supervisor of the town or ward, who shall deliver the same to the board of supervisors

at their next annual meeting, and it shall be called the "military roll of such town or ward." And the clerk of each board of supervisors shall inform the adjutant-general of the number of persons enrolled in each county.

Assessors and supervisors to pursue instructions of adjutant-general. § 9. The assessors and supervisors, in the execution of their duties herein prescribed, shall pursue the instructions which shall, from time to time, be transmitted to them by the adjutant-general.

Penalty for neglect or refusal to perform duties, and manner of enforcing the same.] § 10. If any assessor shall refuse or neglect to perform any of the duties required of him by this act, he shall forfeit and pay the sum of not less than twenty-five nor more than fifty dollars, to be recovered in the name of the people of the State of New-York; and if any assessor shall wilfully neglect or refuse to perform such duties as are hereby required, he shall be deemed guilty of a misdemeanor; and such penalty, when paid or collected, shall be paid into the treasury of the county, and belong to the military fund of said regiment. And it shall be the duty of the district attorneys of the several counties, on the complaint of any commissioned officer of the uniformed militia within the county where such district attorney resides, to prosecute any assessor or collector who shall neglect or refuse to perform any of the duties required of him by this act. The costs of such prosecution, if not collected from the delinquent, shall be a charge upon the county.

Delinquent assessor to be reported to commandant of

regimental district.] § 11. If any assessor shall neglect, or from any cause omit to perform his duties, the other assessors, or either of them, of the city, village, town or ward, shall perform such duties, and shall certify the name of such delinquent assessor, stating the cause of such omission, to the commandant of the regimental district in which he resides.

Information of persons liable to be enrolled.] § 12. All tavern keepers, keepers of boarding houses, persons having boarders in their families, and every master and mistress of any dwelling-house, and head of quaker or shaker societies or communities, shall, upon the application of any assessor, give information of the names of all persons residing or lodging in such house, or belonging to such society or community, liable to be enrolled, and all other proper information concerning such persons as such assessor may demand.

Penalty for not giving information.] § 13. If any person of whom information is required by any assessor, in order to enable him to comply with the provisions of this act, shall refuse to give such information, or shall give false information, he shall forfeit and pay ten dollars for each item of information demanded of him by any assessor and falsely stated, and the like sum for each individual name that may be refused, concealed or falsely stated; and every person who shall refuse to give his own name and proper information when applied to by an assessor, or shall give a false name or information, shall forfeit and pay a like sum, such penalties to be recovered in any court of com-

petent jurisdiction, in the name of the people of the State of New-York; and it is hereby made the duty of the assessors to report the names of all persons, who may incur any penalty in this section prescribed, to the commandant of the regimental district in which they reside.

Duty of board of supervisors.] § 14. The board of supervisors of each county in this State, at their annual meeting, shall, in a column to be provided for that purpose in the corrected assessment and military roll, set opposite to the name of every person not exempt, and against which the words "armed and equipped" shall not appear, the sum of fifty cents, which sum shall be paid by such persons as commutation of the arms, accoutrements and exercise specified in the act of congress approved May eighth, seventeen hundred and ninety-two.

Mode of collecting commutations.] § 15. The said sum of fifty cents against every person who shall appear by the said assessment roll liable to pay the same, shall be collected at the same time and in the same manner as taxes are collected in each county. And the warrants annexed by the supervisors to the assessment rolls of the several towns and wards, shall direct the collectors to collect the amount from every person appearing by the said assessment roll liable to pay the same, in the same manner as taxes are collected, and to pay the same to the county treasurer. And where the name of any person, between the ages of eighteen and twenty-one years, shall appear on the said roll liable to pay the said commutation, the said war-

rant shall direct the collector to collect the same of the father, master or guardian with whom such person shall reside, or out of any property such minor may have in the city, village, town or ward, and such collector shall proceed and execute such warrant.

Commanding officer of regiment may remit erroneous assessment.] § 16. Whenever it shall be made satisfactorily to appear to the commanding officer of any brigade, regiment or uniform company, that by accident, mistake or inadvertence, any commutation or assessment has been ordered collected of any person clearly and palpably not liable to pay the same, such commanding officer may remit such assessment, and his certificate thereof shall be authority for any collector or receiver of taxes to cancel the same on his roll.

The assessor holds one of the most important offices in the county. The relative rights of that large and responsible class in community upon whom is devolved the burden of taxation, are deeply affected by the fidelity and correctness with which he discharges his duty. In the discharge of that duty he needs a sound judgment, clearness of discrimination, intelligence, and integrity of purpose.

CHAPTER VI.

OF THE COLLECTOR.

The statute provides for one collector in each town. He is chosen by ballot at the annual town meeting. Like other town officers, he must be an elector of the town for which he is chosen. He holds his office for one year, or until another is chosen or appointed in his place.

Bond.] Before entering on his duties, and within eight days after he receives notice of the amount of taxes to be collected by him, he must execute to the supervisor of the town, a bond with one or more sureties, to be approved by the supervisor, in double the amount of such taxes, conditioned for the faithful execution of his duties as such collector. (*For form of bond, see Appendix, No. 29.*)

An omission to give the bond within eight days is deemed a refusal to serve. The bond of the collector is a lien upon all the real estate held by him or his sureties within the county, at the time of the filing thereof, and continues so until all charges which may accrue by the prosecution of the same, are fully satisfied. The supervisor must file such bond in the county clerk's office, within six days after it is delivered to him, with his approbation endorsed thereon. 1 R. S. 655, 4th ed.

Vacancy how supplied.] In case any person chosen

or appointed to the office of collector refuses to serve, or if he should die, resign, or remove out of the town or ward, before he has entered upon or completed the duties of his office, or shall be disabled from completing the same, by reason of sickness or any other cause, the supervisor and any two justices of the town or ward, must forthwith appoint a collector for the remainder of the year, who must give the like security, and be subjected to the like duties and penalties, and have the same powers and compensation, as the collector in whose place he was appointed; and the supervisor must forthwith give notice of such appointment to the county treasurer. But such appointment does not operate to exonerate the former collector or his sureties from any liability. 1 R. S. 399; 4th ed. 726.

Warrant to collector, what to contain.] Having filed his bond, the next step is to receive from the board of supervisors the warrant for the collection of taxes in his town. As the warrant must be regular on its face to protect the collector, it is proper to state what the warrant must contain.

The collector's warrant consists of the corrected assessment roll of the town, as the same has been corrected by the board of supervisors, together with a column added; which column contains the several sums in dollars and cents, opposite the sums set down as the valuations of real and personal estate, as a tax to be paid thereon.

The collector is entitled to receive the warrant before the fifteenth day of December in each year.

The warrant should be under the hands and

seals of the board of supervisors, or a majority of them. (*Form of warrant, Appendix, No. 14.*)

The warrant would be valid, and would protect the collector, although the persons signing it should omit to describe themselves therein as supervisors, but it is better that they should designate themselves officially. *Sheldon v. Van Buskirk*, 2 Com. 473.

If the warrant be directed to the collector of a town, it directs him, out of the moneys so to be collected, to pay,

1. To the town superintendent of common schools of his town, such sum as shall have been raised for the support of common schools:

2. To the commissioners of highways of the town such sum as shall have been raised for the support of highways and bridges therein:

3. To the overseers of the poor of the town, if there be no county poor house, or other place provided in the county for the reception of the poor, such sum as shall have been raised for the support of the poor in such town:

4. To the supervisor of the town, all other moneys which shall have been raised therein, to defray any other town expenses: and,

5. To the treasurer of the county, the residue of the moneys so to be collected.

If the warrant be directed to the collector of a ward, it must direct him to pay all the moneys to be collected, after deducting his compensation, to the treasurer of the county.

In all cases the warrant authorizes the collector, in case any person named in the assessment roll

refuses or neglects to pay his tax, to levy the same by distress and sale of the goods and chattels of such person ; it also requires all payments therein specified, to be made by such collector on or before the first day of February then next ensuing.

Where laws have been passed directing the money assessed for a local purpose to be paid to any person or officer other than those named above, the collector's warrant may be varied to meet such case. 1 R. S. 396 ; 4th ed. 722.

The fees of the collector should not be added by the board of supervisors to the warrant. Such fees must be collected as hereinafter mentioned.

Duty of collector on receiving his warrant.] Upon the reception of the warrant for the collection of taxes, the collector must immediately cause notices to be posted in five public places in the town or ward, so located as to be most likely to give notice to the inhabitants, designating in such notices, a central and convenient place in the town or ward, where he will attend from nine o'clock in the forenoon until four o'clock in the afternoon, at least once in each week, for thirty days, on a day to be specified in such notice, for the purpose of receiving payment of taxes. He must attend accordingly. Any person may pay his taxes at that time and place, or at any other time within thirty days after the posting of such notices, on paying one per cent fees thereon. The collector is prohibited from taking more than one per cent fees for receiving such taxes within the thirty days, except in those cases where the aggregate amount to be collected by the warrants placed in the hands of the

collector, does not exceed two thousand dollars; and in such case the collector may receive two per cent on such voluntary payments. He is entitled on such voluntary payments to one cent fees on every amount of tax under one dollar, no matter how small. *Laws of 1845, chap. 181. Laws of 1847, chap. 482. 1 R. S., 4th ed. 722. (Form of notice, Appendix, No. 184.)*

Taxes not voluntarily paid.] After the expiration of the thirty days, the collector proceeds to collect the taxes unpaid, and is entitled to collect five per cent for his fees from the several persons named in the tax list.

When compelled to return unpaid taxes to the county treasurer, he must add to the sums returned five per cent, which goes to the credit of the county.

The collector is entitled to receive two per cent from the county treasurer, as fees for all taxes so returned by him.

Mode of collecting taxes not voluntarily paid.] After the expiration of the thirty days above mentioned, the collector must proceed to collect the taxes mentioned in his warrant, and for that purpose must call, at least once, on the person taxed, or at the place of his usual residence, if in the town or ward for which the collector is chosen, and demand payment of the taxes charged to him on his property.

Proceedings in case of refusal to pay.] In case any person refuse or neglect to pay the tax imposed on him, the collector must levy the same by distress and sale of the goods and chattels of the per-

son who ought to pay the same, or of the goods and chattels in his possession, wherever the same may be found, within the district of the collector; and no claim of property to be made thereto, by any other person, will be available to prevent a sale.

Sale, &c.] The collector must give public notice of the time and place of sale, and of the property to be sold, at least six days previous to the sale, by advertisements to be posted up, in at least three public places, in the town where such sale is made. The sale must be by public auction.

If the property distrained be sold for more than the amount of the tax, the surplus must be returned to the person in whose possession such property was, when the distress was made, if no claim be made to such surplus by any other person. If any other person claims such surplus, on the ground that the property sold belonged to him, and such claim be admitted by the person for whose tax the same was distrained, the surplus must be paid to such owner; but if such claim be contested by the person for whose tax the property was distrained, the surplus moneys must be paid over by the collector to the supervisor of the town, who retains the same until the rights of the parties are determined by due course of law.

Proceedings in case of removal of the person taxed.] In case any person upon whom a tax is assessed, in any ward of any of the cities, or in any town, removes out of the ward or town, after the assessment, and before the tax ought by law to have been collected; or if any person neglect or refuse

to pay any tax assessed in any ward of either of the said cities, or in any town, upon any estate of such person, situated out of the town or ward in which he resides, and within the county; it is lawful in either of those cases, for the collector of such ward or town, to levy and collect such tax of the goods and chattels of the person assessed, in any ward within the said cities, or in any town within the county, to which such person may have removed, or in which he resides.

Though the assessment which forms the basis upon which the tax is levied and the warrant issued, may be erroneous, yet if the warrant is fair on its face, it will protect the collector in taking and selling property, *Henderson v. Brown*, 1 *Caines*, 92, and he has no right to refuse to execute it, although he may believe the assessment was wrong. 7 *Barb.* 127. 7 *Wend.* 392. 2 *Coms.* 473. And it seems that a writ of prohibition will not lie to restrain a collector from collecting a tax, on the ground of its illegality. 4 *Barb.* 17. 1 *Hill*, 195. But where the illegality appears on the face of the warrant, it was held that the collector who proceeds under it is liable in trespass. *The Bank of Utica v. The City of Utica*, 4 *Paige*, 399. The collector may not only seize the goods of the person taxed, but any goods and chattels in his possession. 2 *Coms.* 473.

If he levies during the life of his warrant, he may sell at any time within a week after the expiration of the same. 2 *Coms.* 473. (For forms relating to collector's sales, see *Appendix*, Nos. 30, 31, 32, 33, 34, 35, 36, 37.)

Payment of tax on personal property, how enforced.]

Where a person neglects or refuses to pay a tax imposed on him for personal property, and no goods are found in his possession upon which the same may be levied, and the property assessed exceeds the sum of one thousand dollars, the collector if he has reason to believe that the person taxed, has debts, credits, rights in action, or other personal property not taxed elsewhere, and upon which levy cannot be made, must report the same to the assessors of the town, or ward, who may, in their discretion make application to the county court to enforce the payment of such tax. *Laws of 1842, chap. 318, p. 404. 1 R. S. 724, 4th ed.*

When to pay over moneys.] The collector within one week after the time mentioned in his warrant for paying the moneys directed to be paid to the town officers and county treasurer, must pay the sums required to be paid to them, first retaining his own compensation. He has a right to demand and receive from the town officer, to whom he pays such money, duplicate receipts therefor; one he files with the county treasurer, which entitles him to a credit for the amount stated in the receipt. It would be no excuse to the collector or his bail for not paying over, that the money had been stolen from him. *1 Denio, 233.*

Should there be a surplus assessed over and above the town charges, it should be paid by the collector to the treasurer, and the same will be applied to the reduction of the taxes of the town for the succeeding year.

Tax on portion of lot.] It is the duty of the collector to receive the taxes on a part of any lot of land

charged with taxes, provided the person paying, furnishes a full description of such part. If the tax on the remainder remains unpaid, he must enter such description in his return to the county treasurer, in order that the part on which the tax remains unpaid may be clearly known. If the tract is an undivided parcel, the person paying must state the name of the owner, that it may be excepted in case of a sale for taxes. The collector must enter the name of the owner on his returns of arrears of taxes. 1 R. S. 726, 4th ed.

Duty as to unpaid taxes.] He must deliver to the county treasurer an account of all the taxes he is unable to collect, and upon making oath before the treasurer, or in his absence a justice of the peace, that the sums mentioned remain unpaid, and that he has not upon diligent inquiry been able to discover any goods or chattels belonging to, or in the possession of the person charged with, or liable to pay such sums, whereon he could levy the same, he is entitled to be credited by the county treasurer with such amount.

Proceedings where collector neglects to pay over.] If the collector refuse or neglect to pay to the several town officers of his town or to the county treasurer, the sums required by his warrant to be paid to them respectively, or either of them, or to account for the same as unpaid, the county treasurer must, within twenty days after the time when such payments ought to have been made, issue a warrant under his hand and seal, directed to the sheriff of the county, commanding him to levy such sum as remains unpaid and unaccount-

ed for by such collector, of the goods and chattels, lands and tenements of such collector, and to pay the same to the county treasurer, and to return such warrant within forty days after the date thereof; which warrant the county treasurer must immediately deliver to the sheriff of the county; but no such warrant can be issued by the county treasurer for the collection of moneys payable to town officers, without proof, by the oath of such town officers, of the refusal or neglect of the collector to pay the same, or account therefor.

Duty of sheriff on warrant against collector.] The sheriff to whom such warrant is directed, must immediately cause the same to be executed, and make return to the county treasurer, within the time therein specified, and pay to him the money levied by virtue thereof, deducting for his fees the same compensation that the collector would have been entitled to retain. Such part of the moneys collected, if any, as ought to have been paid by the collector to town officers, must be paid by the county treasurer to the officers to whom the collector was directed to pay the same: but if the whole amount of moneys due from the collector, are not collected in such warrant, the county treasurer must first return the amount which ought to have been paid to him, before making any payment to the town officers.

Sheriff's return.] If the whole sum due from the collector shall be collected, the sheriff must so state in his return; but if a part only, or if no part of such sum be collected, the sheriff must state in his return the amount levied, if any, exclusive of

his fees, and also certify that such collector has no goods or chattels, lands or tenements, in his county, from which the moneys, or the residue thereof, as the case may be, could be levied ; and in either case, the county treasurer must forthwith give notice to the supervisor of the town or ward, of the amount due from such collector.

Collector's bond when to be sued.] The supervisor must forthwith cause the bond of such collector to be put in suit, and will be entitled to recover thereon the sum due from such collector, with costs of suit ; and the sum recovered must be applied and paid by the supervisor, in the same manner in which it was the duty of the collector to have applied and paid the same.

Satisfaction of collector's bond.] At the time the collector settles his accounts with the county treasurer, (except in the city of New-York,) he or any one of his sureties, is entitled to receive if he requests it, from the county treasurer, a satisfaction piece in writing, duly acknowledged before some person authorized to take acknowledgments of the satisfaction of judgments to be used in courts of record. And upon the presentation of such satisfaction piece to the county clerk, he is entitled to have the same entered upon record ; which by operation of law discharges the collector's bond. 1 R. S. 401 ; 4th ed. 728.

How to collect taxes of corporations.] The collector must demand the taxes assessed against incorporated companies, from the president or other managing officer of the corporation, and if not paid, he proceeds in the same manner to collect as in other

cases, and is liable to the same penalties for omission of duty as in other cases. If he is unable to collect such a tax, he must return the same to the county treasurer, and make affidavit that he demanded the tax of the president or some managing officer, and that the same was not paid ; or, that he was unable to make such demand, if such were the facts, and that such company had no personal property from which he could levy such tax. 1 R. S. 754, 4th ed.

Losses.] When losses are sustained by the default of the collector of the town, or ward, the same are chargeable to the town or ward.

Collectors when to meet with assessors.] In those cases where the board of supervisors have ordered a joint meeting of the assessors and collectors, to correct the irregular and imperfect descriptions of non-resident lands, it becomes the duty of the collector to meet with the assessors of his town, pursuant to such order. The collector must there specify to the assessors the several lots to be returned as non-resident property, by reason of the non-payment of taxes. The assessors then arrange them, correct any errors that may be found in the descriptions, and deliver the correct list to the collector, who returns the same to the county treasurer.

There are special and local provisions for the assessment and collection of taxes in the county of Kings, and in the cities of New-York, Albany, Brooklyn, Troy, Rochester and Schenectady. It would be impossible to insert those special and local provisions without transcending the limits prescribed for this work.

The special law on this subject relating to the county of Kings, was passed in 1841; chap. 154 of the laws of that year. *Vide* also 1 *R. S.* 757, 4th ed.

For the provisions on this subject relating to the city of New-York, *vide Laws of* 1850, chap. 121, p. 188. 1 *R. S.* 4th ed., 761.

For Albany, *vide Laws of* 1850, chap. 86, p. 125. 1 *R. S.* 4th ed., 781.

For Troy, *vide Laws of* 1848, chap. 12. *Laws of* 1849, chap. 210, and 1 *R. S.* 4th ed.

For Rochester, *vide Laws of* 1850, chap. 262, p. 501. 1 *R. S.* 4th ed., 797.

For Brooklyn, *vide Laws of* 1850, Chap. 144, p. 242. 1 *R. S.* 4th ed., 799.

For Schenectady, *vide Laws of* 1851, chap. 37. 1 *R. S.* 4th ed., 807.

Military fines.] Any collector or receiver of taxes, who neglects to pay over any military fines or commutations received by him, is deemed guilty of a misdemeanor.

The collector, in addition to the bond already mentioned to be given by him, is required to give a further bond, with sureties to be approved by the supervisor of his town, for the faithful payment of all moneys received by him, in pursuance of the act relating to the militia and the public defence. 1 *R. S.* 4th ed. 623. *Laws of* 1847, chap. 290.*

To collect tax on dogs.] The collector having received from the assessors the tax list upon dogs, which the assessors are required annually to de-

* The laws of 1854, relating to the militia, (see sec. 19 of that act) would seem to supercede the necessity of this bond.

liver to him; (*see Chap. V, relating to assessors,*) must collect the sums of money therein specified, within sixty days after the receipt of such list, in the same manner, and with the like authority as in the collection of taxes imposed by the board of supervisors of the county, and pay the proceeds to the county treasurer, after deducting five per cent. for his commission for collecting. His liabilities are the same for a neglect of duty in this respect, as in case of taxes levied by supervisors.

When the dog may be killed.] The dog thus taxed, may be killed by any person, if the owner should refuse or neglect to pay the tax imposed, within five days after demand of such tax. 1 R. S. 704; 4th ed., vol. 2, 112.

CHAPTER VII.

OF THE OVERSEER OF THE POOR.

SECTION 1. How elected and his duty in relieving the poor.

2. Duty concerning beggars.
3. Duty concerning lunatics.
4. Duty to habitual drunkards.
5. Disorderly persons.
6. Support of bastards.
7. Duty in relation to binding out children.
8. Actions by and against overseers and the bodies they represent.
9. Overseers' duty relating to jugglers, disorderly practices, enforcing penalties for betting, racing of animals, &c.
10. Miscellaneous provisions.

SECTION 1. HOW ELECTED, AND HIS DUTY IN RELIEVING THE POOR.

The electors in towns, determine at their annual town meeting whether they will have one or two

overseers of the poor, and elect the number determined upon at such meeting. If fifteen days elapse after a vacancy occurs in this office, and the electors omit to supply such vacancy at a town meeting, the same may be supplied by the justices of the peace, by appointment. 18 *Wend.* 516.

He forfeits fifty dollars if he refuses to serve.

Oath of office.] Within ten days after notice of his election or appointment, it is his duty to take the constitutional oath, (*see form No. 1*) which must be filed in the office of the town clerk.

Name being on poll list sufficient notice of election.] If his name is on the poll list of the election, that is to be deemed sufficient notice of his election.

Shall determine how paupers are to be maintained by relatives.] The overseer of the poor, has the right to determine the manner in which the father, mother and children of any poor person who is blind, old, lame, impotent or decipit, to such an extent as to be wholly unable to support himself, shall maintain such poor person, provided such relations have the means to provide for such support. 1 *R. S.* 613; 4th ed., vol. 2d, 7.

Natural relations only liable.] The statute compelling parents and children being of sufficient ability to maintain each other, extends only to natural relatives. The husband is not bound to maintain the children of his wife by a former marriage, nor is he bound to maintain his wife's bastard children. *Town of Meriden v. Cox*, 7 *Cow.* 235, also 4 *Term Rep.* 118. 1 *Strange*, 190. 16 *John.* 281.

Child must support grand parents.] A child is bound

to support his maternal as well as his paternal grand parents. 5 Cow. 284.

A parent is under no legal obligation to maintain his daughter's bastard. 5 Cow. 106. (*For form of application to compel a person to support a poor relative, see Appendix, No. 38. Form of notice to accompany same, and affidavit of service, see Appendix, Nos. 39, 40.*)

Proceedings to compel relatives to support poor persons.] Upon any failure of any such relative so to relieve and maintain any such poor person, it is the duty of the overseers of the poor of the town where such poor person may be, to apply to the court of sessions of the county where such relative may dwell, for an order to compel such relief; of which application, at least fourteen days' notice, in writing, must be given, by serving the same personally, or by leaving the same at the last place of dwelling of the individual to whom the same may be directed, in case of his absence therefrom, with some person of mature age.

The court to which the said application may be made, proceeds in a summary way to hear the case, and makes such an order as is deemed just and proper.

If any relative who shall have been required, by such order, to relieve or maintain any poor person, shall neglect to do so, in such manner as shall be approved by the overseers of the poor of the town where such poor person may be, and shall neglect to pay to such overseers weekly the sum prescribed by the court for the support of such poor person, the said overseers may maintain an

action, as for moneys had and received, against such relative, and shall recover therein the sum so prescribed by the said court for every week the said order shall have been disobeyed, up to the time of such recovery, with costs of suit, for the use of the poor.

Proceedings in regard to absconding parent.] In order to protect the town from loss, in the case of an absconding parent, it is provided by statute that, whenever the father, or mother being a widow or living separate from her husband, shall abscond from their children, or a husband from his wife, leaving any of them chargeable or likely to become chargeable upon the public for their support, the overseers of the poor of the town where such wife or children may be, may apply to any two justices of the peace of any county in which any estate, real or personal, of the said father, mother, or husband, may be situated, for a warrant to seize the same. Upon due proof of the facts aforesaid, the said justices shall issue their warrant, authorizing the said overseers to take and seize the goods, chattels, effects, things in action, and the lands and tenements of the person so absconding.

By virtue of such warrant; the said overseers may seize and take the said property, wherever the same may be found, in the same county; and shall be vested with all the right and title to the said property, which the person so absconding had, at the time of his or her departure. All sales and transfers of any personal property left in the county from which such person absconded, made by him, after the issuing of such warrant, whether in

payment of an antecedent debt, or for a new consideration, shall be absolutely void. The overseers shall immediately make an inventory of the property so seized by them, and return the same, together with their proceedings, to the next court of sessions of the county where such overseers reside, there to be filed.

The court, upon inquiring into the facts and circumstances of the case, confirm the warrant and seizure, or discharge the same; if confirmed, direct what part of the personal property shall be sold, and how much of the proceeds of such sale, and of the rents and profits of the real estate, if any, shall be applied towards the maintenance of the wife or children of the person so absconding.

If the party against whom such warrant shall issue, return and support the wife or children so abandoned, or give security, satisfactory to any two justices of the town, to the overseers of the poor of the town, that the wife or children so abandoned shall not become, or thereafter be chargeable to the town or county, then such warrant shall be discharged, by an order of such justices, and the property taken by virtue thereof shall be restored to such party. (*Form of notice of property seized belonging to such absconding person, see Appendix, No. 41. Form of bond to be given to overseers of the poor under this provision, see Appendix, No. 42.*)

The overseers shall sell at public vendue the property so ordered to be sold, and shall receive the rents and profits of the real estate of the person so absconding; and in those towns which are required to support their own poor, the overseers

shall apply the same to the maintaining, bringing up and providing for the wife, child or children so left and abandoned, and for that purpose shall draw on the county treasurer for the said proceeds, as hereinafter directed. They shall account to the court of sessions of the peace for all moneys so received by them, and for the application thereof, from time to time, and may be compelled by the said court to render such account at any time. 1 R. S. 616; 4th ed., vol. 2d, 10.

In *Downing v. Ruger*, 21 Wend. 178, it was held, that on an application for a warrant against a person said to have absconded, leaving his wife or children chargeable to the public, under this statute, that the wife of such person is not a competent witness to prove the fact; but if a warrant should be granted upon *her testimony*, the proceeding is not *void*, but *voidable* only. It is a protection to those acting under its authority.

One overseer may carry on suit.] One of two overseers of the poor, is authorized to institute and carry on proceedings for the seizure of the property of one who has absconded, leaving his wife or child chargeable to the town; yet the rule holds good that when authority is conferred upon *two*, nothing can be done without the consent of *both*; but to prevent a failure of justice, or injury to the public, one may act without the other; as if one be dead, or interested, or absent.

Consent when presumed.] When one acts, the consent of the *other will be presumed* upon the presumption in favor of the performance of official duty; that is to say, that the other had been conferred

with and consulted as to the proceedings to be had. 21 *Wend.* 178.

Moneys received by overseers how disposed of.] All moneys collected by overseers of any town in a county where the poor are all a county charge, from the relatives of any poor person bound to contribute to his support; or from the sale of any personal property, or the rents and profits of the real property, of any person who absconds, leaving a wife and children; or received for any fines, penalties, or forfeitures, which by law are directed to be applied to the support of the poor; or collected on any bond or other security that is given for the benefit or indemnity of any town, or of the overseers or inhabitants of such town; and all other moneys received by such overseers in their official capacity, must be, by them, paid over within thirty days after the receipt of the same, to the county treasurer, for the benefit of the poor; and if not so paid, the same may be recovered in an action to be brought by and in the name of the county treasurer, with interest at the rate of ten dollars on the hundred, for a year, from the time the same should have been paid.

In those counties where the supervisors determine to abolish the distinction between town poor and county poor, and to have all the poor a county charge, it is the duty of the clerk of the board of supervisors immediately to serve notice of such determination on the overseers of the poor of every town in the county. Within three months after the service of such notice, the overseers of the poor of every town must pay over all moneys which

shall remain in their hands, after discharging all demands against them as such overseers, to the county treasurer, to be applied by him towards the future taxes of such town. In case of neglect to pay over such moneys, the county treasurer may maintain an action therefor, in which he will recover interest on the moneys withheld, from the time they should have been paid over.

In those counties in which the distinction between county poor and town poor prevails, the excise money collected in any town, and all penalties given by law to the overseers of the poor, when received, must be applied to the use of the poor of the town in which such money and penalties are collected. 1 *R. S.* 619; 4th ed., 2d vol. 14.

It sometimes becomes necessary for the overseer to know at what precise point of time the distinction between town and county poor begins to exist; that point has been decided. In order to abolish the distinction between town and county poor in a particular county, a resolution to that effect must be passed by the board of supervisors, and the same must be *filed in the county clerk's office*.

Until such resolution has been filed in the clerk's office, the distinction is not abolished, and an application to the court for an order of maintenance, must be made by the overseers of the poor of the proper town, and not by the superintendents of the poor. *Baldwin v. McArthur*, 17 *Barb.* 414.

Settlement, how gained, and proceedings and decisions relating thereto.] It is provided by the Revised Statutes, part 1, chap. 20, title 1, that in all the other counties of this State, except the

counties of Warren, Washington, Saratoga and Genesee, and those counties of which the board of supervisors shall file the determination to abolish the distinction between town and county poor, the poor having a settlement in any town in such county, shall be supported at the expense of such town, and the poor not having such settlement shall be supported by the county in which they may be.

Every person of full age, who, after the law takes effect, shall be a resident and inhabitant of any town for one year, and the members of his family who shall not have gained a separate settlement, shall be deemed settled in such town :

1. If a female, by being married and living for one year with her husband, in which case the husband's settlement shall determine that of the wife.

2. If a male, by being married and residing for one year separately from the family of his father.

3. By being bound as an apprentice, and serving one year by virtue of such indentures.

4. By being hired and actually serving for one year for wages to be paid to such minor. A woman of full age, by marrying, acquires the settlement of her husband, if he have any. And until a poor person gains a settlement in his own right, his settlement is deemed that of his father or mother; but no child born in any place used and occupied as a residence for the poor of any town, city or county, gains any settlement merely by reason of the place of such birth; nor does any child born while the mother is a county pauper,

gain any settlement by reason of the place of its birth.

But no residence of any person as a pauper, in the county poor-house, or place provided for the support of the poor, or in any town while supported at the expense of any other town or county, operates to give such pauper a settlement in the town where such actual residence may be had.

The settlement of the child follows that of the father, if he has any ; if not the settlement of the mother. 2 *Cow.* 537. 6 *Cow.* 433.

If a woman having a settlement marries a man who has none, she retains her maiden settlement, and may be removed to it. *Otsego v. Smithfield*, 6 *Cow.* 760.

Paupers coming directly from another State do not gain a settlement here merely by a year's residence. 19 *J. R.* 56.

A man seised of land in right of his wife, gains a settlement thereby. *Overseers of Whitestown v. Overseers of Constable*, 14 *J. R.* 469.

Where a woman has a husband residing in the State, and able, any settlement which she may have had previous to her marriage is suspended, and she cannot be removed to the place of her former settlement, but only to the place of her husband's last settlement or residence. *Overseers of Sherburne v. Overseers of Norwich*, 16 *J. R.* 186.

The following authorities will aid in deciding many of the numerous and perplexing questions that arise relative to the settlement of paupers. 20 *Johns.* 282. *Id.* 451. 17 *Johns.* 41. 2 *Cow.* 537.

5 *Cow.* 527. 14 *Johns.* 87; 16 *id.* 188; 10 *id.* 229; 19 *id.* 238; 17 *id.* 41.

Paupers not to be removed, and how supported.] The statute provides that no person shall be removed as a pauper from any city or town to any other city or town of the same or any other county, nor from any county to any other county; but every poor person shall be supported in the town or county where he may be, as follows:

1. If he hath gained a settlement in any town in such county, he shall be maintained by such town.

2. If he hath not gained a settlement in the county in which he shall become poor, sick or infirm, he shall be supported and relieved by the superintendents of the poor, at the expense of the county.

3. If such person be in a county where the distinction between town and county poor is abolished, he shall, in like manner, be supported at the expense of the county, and in both the cases aforesaid, proceedings for his relief shall be had as hereinafter directed.

4. If such pauper be in a county where the respective towns are liable to support their poor, and hath gained a settlement in some other town of the same county than that in which he may then be, he shall be supported at the expense of the town where he may be, and the overseers shall give notice in writing to the overseers of the town to which such pauper shall belong, or to one of them, requiring them to provide for the relief and support of such pauper. (*Form of notice from over-*

seer of one town to overseer of another, see *Appendix*, No. 43.)

Proceedings to determine the settlement of paupers.] If within ten days after the service of such notice, the overseers to whom the same was directed do not proceed to test the allegation of the settlement of such pauper, by giving the notice hereinafter directed, they, their successors, and the town which they represent, are forever precluded from contesting or denying such settlement. They may, within the time aforesaid, give notice in writing to the overseers of the town where such pauper may be, that they will appear before the county superintendents, at a place and on a day therein to be specified, which day must be at least ten days and not more than thirty days from the time of the service of such notice, to contest the said alleged settlement.

The county superintendents convene whenever required by any overseers, pursuant to such notice, and proceed to hear and determine the controversy, and may award costs not exceeding ten dollars to the prevailing party, which may be recovered in any action before a court of competent jurisdiction. The decision of the superintendents is final and conclusive. 1 R. S. 622; 4th ed., 2d vol., 16. (*Form of notice under proceedings to determine settlement of paupers, see Appendix*, No. 44.)

Towns how compelled to support paupers.] The overseers of the poor of the town in which it may be alleged any pauper has gained a settlement, may at any time after receiving such notice requiring them to provide for such pauper, take and receive

such pauper to their town and there support him. If they omit to do so, or fail to obtain the decision of the county superintendents, so as to exonerate them from the maintenance of such pauper, the charge of giving such notice, and the expenses of maintaining such pauper, after being allowed by the county superintendents, must be laid before the board of supervisors at their annual meetings, from year to year, as long as such expenses continue to be incurred; and the supervisors must, annually, add the amount of the said charges to the tax to be laid upon the town to which the pauper belongs, together with such sum in addition thereto as will pay the town incurring such expenses the lawful interest thereon, from the time of expenditure to the time of repayment, which sums must be assessed, levied and collected in the same manner as the other contingent charges of such town. The said moneys, when collected, are required to be paid to the county treasurer and by him credited to the account of the town which incurred the said expenses. 1 R. S. 623; 4th ed. 2d vol., 17.

Proceedings to determine who are county paupers.] The support of any pauper cannot be charged to the county without the sanction of the superintendents. If a pauper be sent to the county poor-house, or place provided for the poor, as a county pauper, the superintendents in those counties where the respective towns are required to support their own poor must immediately inquire into the fact, and if they are of opinion that such pauper has a legal settlement in any town of the said county, they

are required, within thirty days after such pauper shall have been received, to give notice to the overseers of the poor of the town to which such pauper belongs, that the expenses of his support will be charged to such town, unless the overseers, within such time as the superintendents appoint, not less than twenty days thereafter, show that such town ought not to be so charged. And on the application of the overseers, the superintendents must re-examine the matter and take testimony in relation thereto, and finally decide the question, which decision is deemed conclusive.

Proceedings in counties where there are no poor houses.]

In those counties where no county poor house or other place is provided, no person can be supported as a county pauper without the direction of at least one superintendent. In such cases the overseers of the poor of the town where such person may be, are required immediately to give notice to one of the superintendents, who must inquire into the circumstances; and if he is satisfied that such pauper has not gained a legal settlement in any town of the said county, he gives a certificate to that effect, and that such pauper is chargeable to the county. He must report every such case to the board of superintendents at their next meeting, who may affirm such certificate, or may annul the same, on giving due notice to the overseers of the poor of the town interested, and after hearing the allegations and proofs in the premises.

If the superintendent to whom the overseers may have given such notice, neglects or refuses to give such certificate, the overseers may apply to

the board of county superintendents, who must summarily hear and determine the matter, and whose decision is conclusive.

The decisions of the board of county superintendents, in relation to the settlement of any paupers, or to their being a charge upon the county, must be entered in books to be provided for that purpose, and certified by the signatures of such of the superintendents as make such decisions; and a duplicate thereof, certified in the same manner, filed in the county clerk's office within thirty days after the making of any such decision. Such original duplicate, or a copy thereof duly certified, is conclusive evidence of the facts therein contained. 1 R. S. 623; 4th ed., 2d vol., 18. (*As to the decisions relating to the powers of superintendents, see the chapter on that subject.*)

Relief to paupers in counties having poor houses.] When any person applies for relief to any overseer of the poor, in any county where a poor house is established, or other place provided for the reception of the poor, such overseers, or any one of them, must inquire into the state and circumstances of the applicant. If it appears that the applicant is in such indigent circumstances as to require permanent relief and support, and can be safely removed, the overseers, or any one of them, may, by a written order, cause the poor person to be removed to the county poor house, or to the place provided as aforesaid, to be relieved and provided for as the necessities of such applicant may require. If the county be one of those where the respective towns are required to support their own

poor, the overseer designates in such order of removal whether the pauper be chargeable to the county or not; and if no such designation be made, such pauper will be deemed to belong to the town whose overseers or overseer made such order. (*Form for order of removal, Appendix, No. 45.*)

Proceedings in regard to relief of paupers who cannot be removed to poor-house.] If it appear that the person so applying requires only temporary relief, or is sick, lame or otherwise disabled, so that he cannot be conveniently removed to the county poor house or to such place as has been provided by the county superintendents, the overseers [or any one of them] must apply to a justice of the peace of the same town, who is required to examine into the facts and circumstances, and in writing, order such sum to be expended for the temporary relief of such poor person as the circumstances of the case require; which order entitles the overseer to receive any sum he may have paid out or contracted to pay, within the amount therein specified from the county treasurer, to be by him charged to the county, if such person be a county charge; if not, to be charged to the town where such relief was afforded; but no greater sum than ten dollars may be expended or paid for the relief of any one poor person, or one family, without the sanction in writing of one of the superintendents of the poor of the county, which must be presented to the county treasurer, with the order of the justice. The overseers have discretionary right to expend a sum not exceeding ten dollars for the relief of one poor per-

son or family, under section forty-two, title first, chapter twenty, first part of the Revised Statutes, without any order from a justice of the peace therefor.

Neglect to give relief, consequences of.] When application is made to the overseer for relief, if he omits to apply to a justice of the peace according to the provisions of the statute last above mentioned, he may be put in motion by mandamus at the instance of the pauper, *Minklaer v. Rockefeller*, 6 Cow. 276; and if the pauper should seek to proceed by action, the suit would have to be brought in the name of the pauper, and not in the name of any person who may have given the pauper temporary relief. *Id.*

Relieving paupers in counties not having poor houses.] If application for relief be made in any of those counties where no county poor house or other place has been provided, as aforesaid, for the reception of the poor, the overseers, with the assistance of some justice of the peace of the same town, inquire into the facts and circumstances of the case, and make an order in writing for such allowance, weekly or otherwise, as the justice and one of the overseers may think required by the necessities of such poor person.

If such pauper have a legal settlement in the town where such application is made, or in any other town of the same county, the overseers must apply the moneys so allowed to the relief and support of such pauper; the moneys paid by them, or contracted to be paid pursuant to such order, may be drawn by them from the county treasurer, on

producing the order, out of the funds in his hands belonging to such town.

If such pauper has no legal settlement in the same county, the overseers must immediately give the notice hereinbefore directed to one of the county superintendents; and until the county superintendents take the charge of the support of such pauper, the overseers must provide for his relief and support, and the expense thereof, from the time of giving such notice to a county superintendent, must be paid to the overseers by the county treasurer, on the production of such order and of proof by affidavit of the time of the giving such notice, and be by him charged to the county. (*Form of order for relief when there is no poor house or other place for reception of poor, see Appendix, No. 46. Form of notice to superintendent, Appendix, No. 47.*)

County paupers in counties having no poor houses, how supported.] When the county superintendents take charge of a county pauper in those counties where no poor house is provided, they may authorize the overseers of the town where the pauper may be, to continue to support him on such terms as they may see fit to prescribe; and thereafter, no moneys are to be paid to the overseers for the support of such pauper, without the order of the superintendents.

Accounts with county treasurer.] In those counties where the respective towns are required to support their own poor, the county treasurers are required to open and keep an account with each town, in which they must credit the town with all moneys received from it, or its officers, and charge the

town with the moneys paid for the support of its poor.

Accounts by superintendents.] In those counties in which a poor house is established, or a place provided, by the superintendents, for the reception of the poor, and in which the several towns shall be liable for the support of their poor respectively, it is the duty of the superintendents, annually, and during the week preceding the annual meeting of the board of supervisors, to make out a statement of all the expenses incurred by them the preceding year, and of the moneys received, and exhibiting the deficiency, if any, in the funds provided for the defraying such expenses; and they must apportion the deficiency among the several towns in proportion to the number and expenses of the paupers belonging to the towns, respectively, who shall have been provided for by the superintendents, and shall charge the towns with the proportions; which statement must be by them delivered to the county treasurer, as before directed.

Accounts of overseers in certain counties; how audited and settled.] In those counties where there are no county poor houses established, it is the duty of overseers to enter in books to be provided at the expense of their towns, an account of all matters transacted by them relating to their official duties; of all moneys received by them, from whom, and on what account; of all moneys disbursed by them, to whom, and by what authority, specifying in each case, whether to town poor, or county poor; the names of all persons applying for relief, and ordered to be relieved, the day and year when

relieved, the weekly, or other sums of money allowed for that purpose, and the cause of giving such relief. (*Form for keeping such accounts, Appendix, No. 47, A.*)

Accounts how audited and settled.] On the Tuesday next preceding the annual town meeting of every town, the overseers must lay such original books before the board of town auditors, together with a just and true account of all moneys by them received and expended for the use of the poor, and in what manner, together with an account of the earnings of the poor persons by them employed; which account must be verified by the oaths of the overseers, and filed with the town clerk. The board of town auditors compare the account with the entries in the poor books, examine the vouchers in support thereof, and audit and settle the same, and state the balance due from such overseers, or to them, as the case may be. No credit is to be allowed to any overseer for moneys paid, unless it appears that such payment was made pursuant to a legal order.

Penalty.] Every person who, having been an overseer of the poor, refuses or neglects to present such original books, or to exhibit such accounts to the board of town auditors, forfeits the sum of two hundred and fifty dollars.

Accounts and estimates to be presented at town meeting.] In those counties where the respective towns are made liable for the support of their poor, it is made the duty of the town clerk to exhibit, at the annual town meetings, the accounts for the support of the poor therein the preceding year, as the same shall

have been allowed and passed by the board of town auditors; and the overseers must also present an estimate of the sum which they shall deem necessary to supply any deficiency of the preceding year, and to provide for the support of the poor for the ensuing year.

Expenses of supporting town poor, how defrayed.] The town by vote determines the sum of money which shall be assessed upon the same the ensuing year for the purposes above mentioned. The sum so voted, when raised and collected in those counties where a county poor house or other place has been provided for the reception of the poor, must be paid to the county treasurer, and by him placed to the credit of the town. In all other counties, the sum so voted by any town must be paid to the overseers of the poor thereof.

Overseers in the cities of Albany, Hudson, Troy, Oswego, &c.] The overseers in the cities of Albany, Hudson, Troy, Oswego and Schenectady, must render their accounts to the common councils of those cities respectively, from time to time, as shall be required. Such cities as are liable for the support of their own poor, must yearly determine the amount to be raised for the support of their poor for the ensuing year, and lay the amount before the board of supervisors of the county, that the same may be assessed, levied and collected, and paid to the county treasurer. *Laws of 1853, chap. 70.*

Compensation to overseers, &c.] The accounts of overseers and of justices of the peace, for any personal or official services rendered by them, in rela-

tion to the poor, must be audited and settled by the board of supervisors, and the sums thus audited and allowed paid by the county treasurer; and if such services were rendered in behalf of any town liable to support its own poor, the same charged to such town. No allowance for time or services can be made to any officer for attending any board with any accounts for the purpose of having the same audited or paid.

Accounts for county paupers, how settled.] All accounts of overseers, justices of the peace, and all other persons, for services relating to the support, relief or transportation of county paupers, must be audited and settled by the superintendents of the poor, who may draw on the county treasurer for the amount audited. *Laws of 1832, chap. 26.* The course for the overseers to pursue under this provision, where they employ physicians and others to render service for county paupers, or incur other expenses in the line of their duty, is to charge such expenses in the bill which they render to the superintendents, and present the same as a part of their own account.

The superintendents are not obliged to audit the accounts which physicians and others may have for such services. Such persons should present the same to the overseers for adjustment, unless the superintendents themselves incur the expense. *Ex parte Green & Brown, 4 Hill, 558.* And in those cases where they do obtain services relating to the support of such paupers, an action cannot be maintained against the superintendent for refusing to audit an account. They act in a judicial capaci-

ty in that respect. *Vedder v. Supts. of Schenectady*, 5 *Denio*, 564. The only way to correct an error on the part of such boards, is by certiorari. 1 *Hill*, 195. 3 *Denio*, 117. 2 *Hill*, 9.

Penalty for removing paupers.] It is provided that any person who shall send, carry, remove or bring, or who shall cause to be sent, brought or removed, any poor or indigent person from any city, town or county, to any other city, town or county, without legal authority, and there leave such poor person, with intent to make such city, town or county, to which the removal shall be made, chargeable with the support of such pauper, or who shall entice any such poor person so to remove, with such intent, shall forfeit fifty dollars, to be recovered by and in the name of the overseers of the poor of the town to which such pauper shall be brought or removed, or in the name of the superintendents of the poor of the county into which the said poor person shall be removed; and shall, moreover, be deemed guilty of a misdemeanor, and, on conviction, be imprisoned not exceeding six months, or fined not exceeding one hundred dollars, or both, in the discretion of the court. *R. S. 4th ed., vol. 2d*, 22.

But this intent must be fraudulent—intent to charge one town, or exonerate another. *Thomas v. Ross*, 8 *Wend.* 672.

It would be no defence to an action for this penalty, to show that the pauper formerly had a legal settlement in the place to which he was brought, and had not subsequently gained one elsewhere; nor would it be a defence to show

that the defendant acted in the removal as a public officer of another State, in conformity with the laws thereof. *Winfield v. Mapes*, 4th Denio, 571.

Proceedings to compel support of a removed pauper.] The pauper so removed, must be maintained by the county superintendents of the county where he may be. They may give notice to either of the overseers of the poor of the town from which he was brought or enticed, if such town be liable for his support; and if there be no town in the county from which he was brought or enticed, liable for his support, then to either of the county superintendents of the poor of such county, informing them of such improper removal, and requiring them forthwith to take charge of such pauper. 1 R. S., 628; 4th ed., vol. 2d, 22. 24 Wend. 339.

Liability how contested.] Within thirty days after the service of the notice above mentioned, the overseers, or the superintendents, must remove the pauper so brought or enticed to their town or county, and pay the expense of the notice, and of the support of the pauper; or they must within the same time, notify in writing, the county superintendents from whom such notice was received, or one of them, that they deny the allegation of enticing or removal, and that they deny the liability of their town.

A neglect to remove such pauper or to notify such denial within the thirty days, on the part of the superintendents and overseers respectively, whose duty it was so to do, is deemed an acquiescence in the allegations contained in the first notice, and their towns and successors in office are

forever precluded from contesting the same, and become liable for the expenses of the support of such pauper. Suits may be commenced for such expenses. (See the chapter upon the duties of the superintendents of the poor.)

Penalty for bringing paupers from without the State.] The penalty of fifty dollars attaches to any person who may bring a pauper from without this State, into any county or town, with intent to make such county or town chargeable. An action for such penalty may be maintained either by the superintendents or overseers of the town or county where the same occurs; and the court before whom such a matter is tried, may require security of the offender, that he will within a reasonable time, to be named by the court, transport such pauper out of the State, or indemnify the town or county for all charges and expenses, and for default may commit him to jail for three months. *Laws of 1831, chap. 277.*

Overseers to prosecute diligently for penalties.] Whenever it appears to the satisfaction of any overseer, either upon complaint or otherwise, that a penalty has been incurred by the violation of any provisions contained in the statutes of this State, which such overseer is directed by law to collect, it shall be his duty immediately to commence a suit for such penalty, and to prosecute the same diligently to effect.

In auditing their accounts, the town auditors are required to allow them for all costs to which they may have been subjected, or which may have been recovered against them in suits brought

by them, and the sum of one dollar per day for attending such suits. Such allowances may be credited to them, in their accounts for moneys collected for penalties, and may be deducted from such moneys, and the balance paid to their successors, or the county treasurer.

Poor moneys invested.] Where a town has money raised for the support of the poor invested in the name of the overseers, they continue to have the control of the same, and should apply the interest to the support of the poor of their town, so long as the town remains liable to support its own poor, but when relieved from such liability by a vote of the supervisors of the county, the moneys so invested should be applied to the payment of such taxes upon the town as the inhabitants at their annual town meeting determine.

Where overseers to receive poor moneys.] In those counties where there is no county poor house or other place provided for the reception of the poor, the moneys raised and collected in the several towns, for the support of the poor, must be received and disbursed by the overseers of the poor in such towns respectively.

SECTION 2. OVERSEER'S DUTY CONCERNING BEGGARS.

Whenever any child shall be found begging for alms, or soliciting charity from door to door, or in any street, highway or public place, it becomes the duty of any justice of the peace, on complaint and proof, to commit such child to the county poor house, or to such other place as may be provided for the support of the poor; there to be detained

and instructed in useful labor until discharged by the county superintendent, or bound out as an apprentice by them, or the commissioners of the alms house, or the *overseers of the poor*. 1 R. S. 633; 4th ed., 2d vol., 35.)

The overseers have the same power to consent that such child may bind himself as an apprentice that the superintendent has.

SECTION 3. DUTY CONCERNING LUNATICS.

Title third of chapter 20, of part 1 of the Revised Statutes relates to the care of lunatics, and the duties of overseers and others in relation thereto. The overseers have the same remedies to compel the relatives of a lunatic or mad person, to confine and maintain such person, and to collect the costs and charges of such confinement, as are given in the case of poor and indigent persons becoming chargeable to any town.

When the lunatic is destitute of means, and his relatives undertake to provide for his confinement and support, it must be done subject to the approval of the overseers of the town.

How secured.] In case of neglect on the part of the committee or the relatives of a lunatic, to confine and maintain him, or when they have not the ability so to do, it is the duty of the overseers to apply to any two justices of the peace of the city or town, who upon being satisfied after examination that it is dangerous to permit such lunatic to go at large, must issue their warrant for his apprehension.

Lunatic to be sent to asylum.] The overseers should provide a secure place for his temporary confine-

ment, and within ten days the lunatic must be sent to the State Lunatic Asylum, or to such public or private asylum as may be approved by a standing order of the supervisors of the county. The provision allowing a longer confinement than ten days has been repealed.

By a recent statute, the overseers are specially enjoined to perform their duty in this regard in the most humane and speedy manner. *Laws of 1842, chap. 135, sec. 20.*

Penalty for unlawfully confining lunatics.] An overseer is deemed guilty of a misdemeanor, and is liable to a fine of two hundred and fifty dollars and one year's imprisonment, for confining a lunatic in any manner, or in any place not prescribed by law. 1 R. S. 625; 4th ed., 2d vol., 38.

May compel committee to support lunatic.] The overseers may compel the *committee* of a lunatic to confine and support him and collect the expense of the same, in the same manner that they are authorized to compel the *relatives* of such lunatic to confine and maintain him.

Appeal may be taken from the order of the justice or overseer.] Any lunatic confined under the provisions before mentioned, or any friend in his behalf, may appeal within three days after the decision of the justices, or the overseers, or the superintendent in regard to his case, to the county judge of the county, which appeal stays his being sent out of the county until a jury can decide upon the question of his lunacy. The proceedings on such appeal are pointed out by *chapter 135, of the Laws of 1842*; and see also amendments, *Laws of 1851*,

chap. 445, sec. 33; also, *Laws of 1850, chap. 282*; also, *Laws of 1851, chap. 446*.

The several steps in regard to the admission of indigent lunatics, as well as those who are not, into the lunatic asylum, are pointed out in the several laws last above cited.

SECTION 4. DUTY CONCERNING DRUNKARDS.

Drunkards.] When the overseers discover any person to be an habitual drunkard, it becomes their duty by writing to designate and describe such drunkard, and, by a written notice signed by them, require every merchant, distiller, shop keeper, grocer, tavern keeper, or other dealer in spirituous liquors, and every other person residing within the town or the city, or town adjoining, not to give or sell under any pretence, any spirituous liquors to such drunkard. 1. *R. S. 636; 4th ed., 2d vol., 51*; also *Laws of 1840, chap. 229*. (*Form of notice, Appendix, No. 50.*)

Penalty for disregarding notice.] If, after the personal service of such notice, any of the class of persons above described, or any clerk, agent, or member of the family of such person, so served with notice, shall knowingly give or sell, in any manner, spirituous liquors to any such drunkard, except by the personal direction, or on the written certificate of some physician regularly licensed to practice according to law, stating that such liquor is necessary for the preservation or recovery of the health of such drunkard, the person so offending forfeits for every offence the sum of ten dollars. *Id.*

For selling to the minor, apprentice or servant,

of any parent or guardian who has been designated by the overseers as an habitual drunkard, without the consent of the *overseers*, the party offending forfeits the sum of five dollars. *Laws of 1840, chap. 229.*

Charge of drunkenness, how contested.] Any person so designated by the overseers of the poor as an habitual drunkard, may apply to any justice of the peace of the city or town in which the person so designated resides, for process to summon a jury to try and determine such fact of drunkenness.

Proceedings, venire, &c.] On such application, the justice must immediately give notice, in writing, to the overseers, specifying the time and place where the parties shall meet for the trial of such fact, and must issue a venire to any constable to summon a jury of twelve persons, competent to serve on juries, to appear at the said time and place for the purpose of trying the fact.

Such jury must be summoned, returned, and six of them balloted for by the justice, and be sworn well and truly to try the fact of the alleged drunkenness, in the same manner as for the trial of issues in suits brought before a justice of the peace; and witnesses shall be summoned, and their attendance and testimony enforced; and they must be sworn and examined before the jury in like manner.

The jury hear the allegations and proofs offered on both sides, and proceed in all respects as in trials at law to render their verdict; which verdict must be entered by the justice in a book, to be by him provided for that purpose.

Effect of verdict.] The verdict, or an attested copy thereof, under the hand of such justice, will be received and deemed to be presumptive evidence of the fact thereby found, in any action between the overseers of the poor and any person prosecuted by them for the penalty hereinbefore mentioned.

Costs.] If by the verdict of the jury it shall be found that the person demanding such trial is an habitual drunkard, the justice enters judgment against such person and awards execution for the costs of the overseers in attending the trial, in the same manner as in suits between individuals, which justices of the peace are authorized to try and determine.

If it be found that such person is not an habitual drunkard, the justice in like manner enters judgment and awards execution for the costs of such person, against the overseers, unless it appears to such justice that the overseers acted in good faith, and had reasonable cause to believe such person an habitual drunkard; in which case no costs can be awarded against them, but each party pays his own costs.

How paid for services, and when to revoke notice.] The accounts of the overseers for the expense of defending against any such application, are to be audited and allowed in the same manner as the other expenses of such city or town.

If at any time the overseers become satisfied that such drunkard has reformed and become temperate, they may revoke and annul any such notice given by them or any of their predecessors in office. (*Form of revocation, Appendix, No. 51.*)

SECTION 5. DUTY RELATING TO DISORDERLY PERSONS.

The only duty devolved upon the overseer under title 5, of chapter 20, of part 1 of the Revised Statutes, entitled "of disorderly persons," is to prosecute for the breach of any recognizance given by such persons for good behavior. Suits may be instituted on such recognizances, by the overseer or county superintendent of the poor, or a justice of the peace. 1 *R. S.* 639; 4th ed., 2d vol., 54. For the statutory definition of a disorderly person, and the adjudications under the statute: See 1 *R. S.* 638, and *Duffy v. The People*, 1 *Hill*, 355. See also, 6 *Hill*, 75; 3 *Denio*, 103; 8 *Cow.* 139; 5 *Barb.* 205; 23 *Wend.* 48; 4 *Barb.* 31.

The recognizance given by a disorderly person as security for good behavior, is not a record, but remains with the magistrate; and in a suit by the overseer, against the surety, it need not be averred in express terms that an action accrued against him. *The People v. Mitchell*, 1 *Sanford*, 191.

Maine law.] The overseer is required by section 14, of chapter 231 of the Laws of 1855, whenever he has any knowledge or information that any offence has been committed under any provision of that act, to make complaint or cause complaint to be made for such offence, and to prosecute such complaint.

SECTION 6. OF THE SUPPORT OF BASTARDS.

The act relating to the support of bastards, goes so much into detail as to the mode of procedure under its provisions, and its execution is attended

with so much litigation, that it has been deemed desirable to insert many sections of the statute without abbreviation.

Who are bastards.] “§ 1. Every child shall be deemed a bastard within the meaning of this title, who shall be begotten and born :

1. Out of lawful matrimony.

2. While the husband of its mother continued absent out of this State, for one whole year previous to such birth, separate from its mother, and leaving her during that time continuing and residing in this State.

3. During the separation of its mother from her husband, pursuant to a decree of any court of competent authority.”

Though the law is not so strict as to require that the child should be *begotten*, it makes it an indispensable condition to render it legitimate, that it should be *born* after lawful wedlock. 2 *Kent's Com.*, 208 ; 4 *id.*, 413.

How supported.] “§ 2. The reputed father and the mother of every bastard shall be liable for its support ; in their default or inability, it shall be supported by the county or town in which it shall be born, as hereinafter provided.”

Removal of mother prohibited, how supported if removed.] “§ 3. If the mother of any bastard, or of any child likely to be born a bastard, shall be removed or clandestinely brought, or enticed to remove, into any county, from any other county of this State, for the purpose of avoiding the charge of such bastard or child upon the county or any town from which she shall have been so brought or en-

ticed to remove, the same penalties shall be imposed on every person so bringing, removing or enticing such mother to remove, as are provided in the case of the clandestine or fraudulent removal of a pauper. Such mother, if unable to support herself, shall be supported during her confinement and recovery therefrom, and her child shall be supported, by the county superintendents of the poor of the county where she shall be, if no provision be made by the father of such child."

Proceedings to compel support of mother and child in proper county.] "§ 4. Such mother and her child shall in all respects be deemed paupers; and the same proceedings may be had by the county superintendents to charge the town or county from which she was removed or enticed, for the expense of supporting her and her child, as are provided in the case of paupers fraudulently or clandestinely removed; and an action may be maintained in the same manner for the said expenses, and for all expenses properly incurred in securing the father of such child, or in seeking to compel its support by such father or its mother."

When the overseers should apply to magistrate.] "§ 5. If any woman shall be delivered of a bastard child, which shall be chargeable or likely to become chargeable to any county, city or town; or shall be pregnant of a child likely to be born a bastard, and to become chargeable to any county, city or town; the superintendents of the poor of the county or any of them, or the overseers of the poor of the town or city, or any of them, where such woman shall be, shall apply to some justice of the

peace of the same county to make inquiry into the facts and circumstances of the case.” (*Form of application, Appendix, No. 52.*)

The overseers or one of them, should appear in person before the justice to make the complaint. *Wallsworth v. McCullough*, 10 J. R. 93.

Proceedings of justice on the complaint.] “§ 6. Such justice shall, by examination of such woman on oath, and upon such other testimony as may be offered, ascertain the father of such bastard, or of such child likely to be born a bastard; and shall thereupon issue his warrant, directed to any constable of the county, commanding him forthwith to apprehend such reputed father, and to bring him before such justice, for the purpose of having an adjudication respecting the filiation of such bastard, or of such child likely to be born a bastard.”

Proceedings against father out of the county.] “§ 7. If the person charged as such reputed father shall be or reside in any other county of the state than that in which such warrant issued, the justice issuing the same shall, in writing thereon, direct the sum in which any bond shall be taken of the person so charged; and it shall be the duty of the constable, or other proper officer having the same, to carry it to some justice of the city or county wherein such person resides, or can be found. The justice to whom the same shall be presented, on proof being made to him of the handwriting of the justice who issued such warrant, shall endorse his name thereon, with an authority to arrest such person in the county where the justice so endorsing shall reside; which shall be a sufficient au-

thority to the person bringing such warrant, and to all others to whom it was originally directed, to execute the same in the county where it was endorsed."

Justice to take bond to indemnify or appear at sessions.]

"§ 8. Upon the person so charged being apprehended, he shall be carried before the justice who endorsed the said warrant, or some other justice of the same county, who may take from such person a bond to the people of this State, with good and sufficient sureties in the sum so directed on the said warrant, with condition to indemnify the county and town, or city where the said bastard shall have been born, or where the woman likely to have such bastard shall be, and every other county, town or city which may have incurred any expense or may be put to any expense for the support of such child, or of its mother during her confinement and recovery therefrom, against all such expenses, and to pay the costs of apprehending such father, and any order of filiation that may be made; or such justice may take from the person so charged and apprehended, a bond as aforesaid, in the sum directed on the said warrant, with good and sufficient sureties, conditioned that such person will appear at the next court of sessions to be holden in the county where such warrant was originally issued, and not depart the said court without its leave."

Care should be observed in drawing the bond under the above section. Should the justice insert any condition in the bond in addition to the provisions required by law, the bond would be

void in toto. *The People v. Meighan*, 1 *Hill*, 298. See also, 5 *Hill*, 647. (*Form of bond on arrest under sec. 8, Appendix, No. 64. Form of subpoena for witness, No. 65, Appendix.*)

How to proceed when bond is executed.] Upon the execution of a bond with either of the conditions above mentioned, it becomes the duty of the justice to discharge the person from arrest, and endorse upon the warrant a certificate to that effect. He delivers the warrant with the bond, to the constable who brought such warrant, who must deliver the same to the justice who granted it, whose duty it is to proceed in the same manner as if such bond had been taken by him.

How, when not executed.] “§ 10. If the person so charged and apprehended shall not execute the bond so required, with one or other of the conditions aforesaid, to the satisfaction of the justice before whom he shall be brought, then the constable or other proper officer having such warrant, shall take the person so apprehended before the justice who originally issued such warrant.”

Proceedings before the justices.] “§ 11. Upon the person so charged with being the father of such bastard, or of such child likely to be born a bastard, being brought before the justice who issued the warrant for his apprehension, whether he was arrested in the same or in any other county, the said justice shall immediately call to his aid any other justice of the same county; and the said two justices shall proceed, without unnecessary delay, to make examination of the matter, and shall again examine the mother of such bastard, or the wo-

man so pregnant as aforesaid, on oath, in the presence of the person so charged or apprehended, touching the father of such child, and shall hear any proofs that may be offered in relation thereto ; and on the application of the person so charged, or of the persons appearing in behalf of the public, either of the said justices shall issue a subpœna to compel the attendance of witnesses before them, which may be enforced, and the witnesses may be compelled to appear and testify, in the same manner as in any civil cause, before a justice of the peace.”

The hearing may be adjourned not exceeding six weeks. The justices must take a bond for the appearance of the accused, in such a penalty as shall be deemed a full indemnity to the town. (*Form of bond on adjournment, see Appendix, No. 66.*)

Hearing before the justices.] When the justices are prepared to proceed, they must determine who is the father of such bastard, or of such child likely to be born a bastard, and they are required to proceed as follows :

1. If they determine that the person so charged and apprehended is not the father of such bastard, or child, he shall be forthwith discharged.

2. If they determine that he is such father, they shall make an order of filiation, in which they shall specify the sum to be paid weekly, or otherwise, by such putative father, for the support of such bastard, or of such child likely to be born a bastard.

3. If the mother of such child be in indigent circumstances, they shall determine the sum to be paid by such putative father, for the sustenance of

such mother during her confinement and her recovery therefrom.

4. They shall certify the reasonable costs of apprehending and securing the said father and of the order of filiation.

5. They shall reduce their proceedings to writing, and subscribe the same. (*Form of order of filiation, Appendix, No. 67.*)

Should the justice decide in favor of the party charged with being the father of the child, *it seems* that an appeal will not lie at the instance of the superintendents of the poor from such adjudication. 19 *Wend.* 154. And such adjudication is a bar to a second proceeding against the person accused, respecting the same matter. *Thayer v. Overseers of Hamilton*, 5 *Hill*, 443.

But if the party adjudged by the justices to be the putative father, give the bond to appear at the sessions, it operates as an appeal to the sessions, and if the matter should be then discontinued, new proceedings to charge him, may be pursued in the same or in any other town in which the bastard is, or is likely to be chargeable. *Stowell v. Overseers of Volney*, 5 *Denio*, 98.

Costs to be paid and bond entered into.] “§ 14. Such person so adjudged to be the reputed father, shall, upon notice of such order, immediately pay the amount so certified for the costs of apprehending him, and of the order of filiation, and shall enter into a bond to the people of this State, in such sum as such justices shall direct, with good and sufficient sureties, to be approved by them, with one or other of the following conditions: First, that

such person will pay weekly, or otherwise, as shall have been ordered, such sum for the support of the said child, and for the sustenance of its mother as aforesaid, as shall have been ordered, or shall at any time thereafter be ordered by the court of sessions of the same county; and that he will fully and amply indemnify the county and town, or city where the said bastard shall have been born, or where the woman likely to have such bastard shall be, and every other county, town or city which may have incurred any expense, or may be put to any expense for the support of such child, or its mother, during her confinement and recovery therefrom, against all such expenses: Or, second, that such person will appear at the next court of sessions of the said county, and not depart the said court without its leave." (*Bond under order of filiation, Appendix, No 68.*)

If the reputed father, against whom such order of filiation is made, should not pay the amount certified for the costs of apprehending him, the justice may issue a warrant for his commitment, though he has executed a bond pursuant to the foregoing provisions. (*Form of warrant to commit, Appendix, No. 69.*) Where such bond is given, but the costs not paid, the warrant should direct the father to be safely kept until discharged by the court, or until he shall pay the costs. *The People v. Stowell*, 2 Denio, 127. As to the length of time such bond continues in force, see *Falls & Smith v. Belknap*, 1 J. R. 486.

The justices may order the overseers to relieve the mother prior to the birth of the bastard, and

pay the lying-in expenses; and after the bastard is born, may upon the filiation, order the putative father to pay a certain sum for such expense, and the mother's support, to the time of the first order. *Overseers of Minden v. Cox*, 7 Cow. 235.

When father to be discharged and when committed.] Upon the bond being executed to the satisfaction of the justices, as contemplated by section 14, of the statute above mentioned, they shall discharge such person from his arrest. But if he refuse or neglect to execute a bond, with one of the conditions aforesaid, or to pay the costs and charges so certified, he must be committed by such justices, or either of them, to the common jail of the city or county, by warrant, there to remain until discharged by the court of sessions, or until he shall execute such bond in the penalty which shall have been required by the justices.

During the examination, and until discharged, he must remain in the custody of the constable who apprehended him, unless he gives the bond required for his appearance. When committed to jail, he must be confined therein without being let to bail, and without the benefit of the liberties of the same.

Proceedings in case bond is given out of the county.] In those cases where the bond is taken out of the county, and is returned to the justice who issued it, such justice must call in the aid of another of the same county, and the two are to proceed and examine and determine who is the father, and make an order of filiation, and prescribe the sum to be paid for the support of the child and the sus-

tenance of the mother, and certify the reasonable costs of the proceeding. 1 R. S. 645, sec. 18.

When the condition of a bastardy bond taken out of the county under the foregoing provisions, is merely to *indemnify*, the two justices of the county in which process issued, have the same power to make an *order of filiation* that they have when the bond is to appear at the next court of sessions. *The People v. Tilton*, 13 Wend. 597.

The proceedings may be had in the absence of the accused, unless before the same are commenced, he personally requires of the justice issuing the warrant that the same be had in his presence, in which case, reasonable notice of the time and place of hearing must be given to the accused.

He may appear and offer testimony, and defend in the same manner as in the case of persons so charged being brought directly before the justice in the first instance.

Mother compelled to testify.] In conducting the examination, the justices may compel the mother, or the woman pregnant with a child likely to be born a bastard, to testify and disclose the name of the father of such bastard child; and in case of her refusal, may after one month from the time of her delivery, if her health will permit, commit her to the common jail of the county, there to remain until she shall testify and disclose the name of such father. 4 Wend. 555. 9 East, 364. (*Form of warrant to commit mother*, Appendix, No. 71.)

When the mother may be compelled to support bastard.] In case the mother of a bastard child, chargeable or likely to become chargeable, has property in

her own right, the overseers, or county superintendents, may institute proceedings before any two justices of the county, to inquire into the matter, (*Form of summons, see Appendix, No. 72,*) who may in their discretion make an order charging the mother with the payment of money weekly, or with such other direction for the support of such child as they shall deem proper. (*Form of order to compel mother to support child, Appendix, No. 73.*)

For disobedience to such order, she may be committed to jail, unless she execute a bond, with good sureties, to appear at the next court of sessions. (*Form of warrant of commitment against mother, Appendix, No. 74.*)

The sum ordered may be reduced or increased.] Section 23 provides that the justices who may have made any order of filiation against the father or mother of any bastard, may from time to time vary the amount therein directed to be paid, by reducing the same as circumstances may require ; and upon the application of any county superintendent or overseer interested therein, and after ten days' notice, to be given to the party who may be affected thereby, the court of sessions of the county may increase the sum in and by such order directed to be paid for the support of any bastard ; and the said court, on the application of any person affected by such order, and after the same notice to the superintendents or overseers at whose instance it was procured, may reduce the amount directed to be paid by any such order.

Appeals.] § 24. "Any person who shall think himself aggrieved by any order, or determination of

any two justices of the peace, made pursuant to any authority hereby given, may appeal therefrom to the next court of sessions, to be holden in the same county, excepting any person who shall have executed a bond, to perform any order of filiation and of settlement, and to indemnify the public, who shall be concluded thereby, and shall not be permitted to appeal from any other part of such order, than such as fixes the weekly or other allowance to be paid. Whenever a bond shall be entered into by a person charged as the father of a bastard, or of a child likely to be born a bastard, or by the mother of a bastard, for his or her appearance at the next court of sessions, the same shall be deemed an appeal from the order of filiation or sustenance, or both, as the case may be, and no further or other notice thereof shall be required. In other cases of appeal, notice shall be given to the justices making the order, and to the other party affected by such order, or to the superintendent or overseers at whose instance the same was obtained, at least ten days previously. (*Form of notice of appeal, No. 78, Appendix.*)

As soon as the appeal is taken, the order of filiation looses its force as an adjudication. *Stowell v. The Overseers of Volney*, 5 *Denio*, 98.

The appeal opens the whole matter anew. *Roy v. Thayer*, 7 *Wend.* 359.

Witnesses may be compelled to appear and testify on such appeal, in the same manner as in criminal cases.

The court after hearing the proofs and allegations of the respective parties, makes such order,

affirming, quashing, or modifying the order appealed from, as shall be just. If the mother of the bastard be dead or insane, the testimony given by her on her examination, must be received with the same effect as if she were present and testified the same.

On the trial of the appeal, the appellant is not entitled to a trial by jury. 7 *Wend.* 359.

If at the time of the hearing, the woman so pregnant has not been delivered, the court may adjourn from time to time until the birth of the child. If she should marry before her delivery, or miscarry, or find herself mistaken as to her supposed pregnancy, the person charged as the father must be forthwith discharged. Should the order of filiation made by the justices be affirmed upon appeal, the court must require the accused to enter into such a bond as is required by section 31. 1 *R. S.* 648; 4th ed., 2d vol., 61.

Upon a failure to execute the bond to the satisfaction of the court, the accused must be committed.

Proceedings where mother is bound to appear.] Where the mother of any bastard shall be bound to appear at any court of sessions, to answer on account of any order made against her for the support of such bastard, or shall be committed for neglect or refusal to enter into such bond, the court must examine into the matter, compel the attendance of witnesses, and hear the allegations and proofs of the parties, in the same manner as hereinbefore directed in the case of an appeal.

Should the court ascertain that the mother has

property in her own right, sufficient to support or partly support the bastard, the order may be confirmed or modified; but if she has no property she should be discharged.

Proceedings on affirming order.] If the court affirm the order, it requires the mother to execute a bond, in such sum as it shall prescribe, with sufficient sureties, to the people of this State, conditioned that such mother will faithfully comply with and obey the order for the support of such bastard, so made and affirmed, as the same shall have been modified, or may thereafter be modified by the court of sessions. If she shall refuse or neglect to execute such bond, she must be committed, by an order of the said court, to the common jail of the county; there to remain until she execute such bond, or until she is discharged by the court.

Costs on appeal.] The court awards costs to the party in whose favor such appeal is determined, and to any party to whom notice of appeal is given and not prosecuted. When awarded against any county superintendents, or overseers of the poor of any town not liable for the support of its own poor, the amount must be paid by the county treasurer, on the production of a certified copy of the order, and of the taxed bill of such costs, and by him charged to the town which shall be bound to support such bastard, if any town in the same county be so liable; and if there be no town so liable, then to be charged to the county.

In other cases, payment of such costs may be enforced by attachment or by action. If the party liable to pay resides out of the jurisdiction of

the court of sessions, an action may be brought on the order of the court, and to maintain the action all the evidence required is a certified copy of the order and a certified copy of the taxed bill of costs. *Superintendents of Poor v. Moore*, 12 *Wend.* 273.

When original order may be made by the sessions.] If the court upon appeal quash the order of filiation, for any other reason than upon the merits, it may make an original order of filiation, with the same force and effect as if made by two justices, or such court may hold the accused to bail to appear at the next sessions.

Should the order of filiation be quashed for irregularity, new proceedings may be instituted for the apprehension of the person charged, and for the making an order of filiation, with the same effect as if none had been commenced.

The duties of the court in case of imprisonment, and the inability of the accused to pay, under this act, are pointed out in sections 41, 42, 43 and 44 of the title above referred to. 1 *R. S.* 650; 4th *ed.*, vol. 2d, 63.

When bonds are given for appearance, and there is default, it becomes the duty of the district attorney to prosecute; default in bonds given for the *support* of the bastard or the *sustenance* of its mother, may be prosecuted by the superintendents or the overseers.

Sections fifty and fifty-one of the title before mentioned, provide for the payment of costs in case judgment be given for the defendant, and for the bringing of actions in certain cases. See 1 *R. S.* 652; 4th *ed.*, vol. 2d, 64.

Proceedings against absconding father or mother.]

“§ 52. If the putative father or mother of any bastard, or of any child likely to be born a bastard and to become chargeable, shall run away from the place of their ordinary residence, leaving such bastard or child chargeable, or likely to become chargeable to the public, the overseers of the poor of the town, or the superintendents of the poor of the county where any such bastard shall be born or be likely to be born, may apply to any two justices of the peace of the county where any estate, real or personal, of the putative father or mother of such bastard shall be, for authority to seize and take such real and personal estate. Upon due proof being made, to the satisfaction of such justices, of the said facts, they shall issue their warrant, in the same manner as is provided in the first title of this chapter in relation to parents absconding and leaving their children chargeable; and the same proceedings, in all respects, shall be had thereon, and the overseers and superintendents shall account to the sessions in the manner therein provided.”

Mother and child to be supported as paupers.] The mothers of bastards, who are unable to support themselves during their confinement, and bastards born of such mothers, must be supported as other paupers are supported, at the expense of the town where such bastards are born, provided the mother has a legal settlement in such town, and the town is required to support its own poor.

If the mother have a settlement in any town of the same county, which is required to support its

own poor, then at the expense of such town; in all other cases they are to be supported at the expense of the county where such bastard shall be born.

Such mother and her child must not be removed from any town to any other town in the same county, nor from one county to any other county, in any case whatever, unless voluntarily taken to the county or town liable for their support, by the county superintendents of such county or the overseers of the poor of such town.

In those bastardy cases likely to become chargeable to the county, the overseers should immediately on receiving information of such fact, give notice to the county superintendents or one of them, whose duty it is to provide for such cases, in the same manner as for the poor of the county, and until the county superintendents take charge of the case, the overseers must provide for them, and may take the same proceedings as for the support of a pauper who cannot be conveniently removed to the county poor house.

Section fifty-eight provides that where a woman is pregnant of a child likely to be born a bastard, or to become chargeable to a town, or where a bastard is born chargeable or likely to become chargeable to a town, the overseers of the poor of the town where such bastard is born, or likely to be born, whether the mother have a legal settlement therein or not, must provide for the support of such child and the sustenance of its mother during her confinement and recovery therefrom, in the same manner as they are authorized by law

to provide for and support the poor of their town.

Moneys paid over by parents of bastards, how disposed of.] Where money is paid to any overseers, pursuant to the order of any two justices, by any putative father, or by the mother of any bastard; the overseers may expend the same directly in the support of the child and the sustenance of its mother, without paying the same into the county treasury. They must annually account, on oath, to the board of town auditors, at the same time that other town officers are required to account, for expenditures of all moneys so received by them, and pay over the balance in their hands to their successors in office, at the same time, and under the like penalties as are provided by law in respect to the poor moneys in their hands.

Moneys ordered to be paid by the putative father, or by the mother of a bastard chargeable to the county, must be collected for the benefit of such county; and all overseers of the poor, superintendents, sheriffs, and other officers, must within fifteen days after the receipt of such moneys, pay the same into the county treasury. Upon neglect of any of the said officers to make such payment, they are liable to an action by and in the name of the county treasurer, for all moneys so received and withheld, with the interest from the time of the receipt at the rate of ten dollars upon the hundred dollars; and forfeit a sum equal to that so withheld, to be sued for and recovered by and in the name of the county treasurer.

Disputes concerning the legal settlement of the

mother of a bastard, or a bastard child, must be determined by the board of county superintendents.

Settlements in bastardy cases.] Where a bastard is born, or likely to be born in one town, when the legal settlement of the mother is in another town of the same county, which is required by law to support its own poor, the overseers of the poor of the town where such bastard is born, or likely to be born, must give the like notice to the overseers of the town where the mother's settlement may be, as is required in the case of a person becoming a pauper, under the like circumstances; and the same proceedings must be had in all respects to determine the liability of such town as in the case of paupers.

The overseers of the town to which the mother of such bastard belongs, may, before the confinement of the mother, or at any time after the expiration of two months after her delivery, if her situation will permit it, take and support such mother and her child.

If they omit to do so, and fail to obtain the determination of the county superintendents in their favor on the question of settlement, the town to which the mother belongs is liable to pay all the expenses of the support of such bastard and of its mother during her confinement and recovery therefrom; which expenses, after being allowed by the county superintendents, are to be assessed, together with the lawful interest on the moneys expended, on the town to which such mother belongs, and collected in the same manner as pro-

vided for poor persons supported under the same circumstances ; and the moneys so collected must be paid to the county treasurer for the benefit, and to be credited to the town which incurred the expenses.

In those cases where a town is required to support a bastard and its mother, whether the mother have a settlement in such town or not, and no moneys are received from the putative father, or from the mother, to defray the expense of such support, the overseers must apply to a justice of the peace, and obtain an order for the support of such bastard, and the sustenance of its mother, during her confinement and recovery ; and the sum to be allowed therefor in the same manner as is required in the case of paupers ; and the moneys paid, or contracted to be paid, by the overseer, pursuant to such order, must be paid by the county treasurer, in the same manner as for paupers, and to be charged to the town to whose officers such payments are made.

It is the duty of the overseers to apply for an order of filiation, although the mother has no settlement in the town where the child is born. *Wynkoop v. Overseers of New-York*, 3 J. R. 15.

As to what shall be deemed the legal settlement of the child, it has been held to be deemed and adjudged to be settled in the city or town of the last legal settlement of the mother. 17 J. R. 41.

The overseers may with the approval of the county superintendents, or any two of them, when the situation of the mother will allow it, remove

her and her child to the county poor house, or other place provided for the reception of the poor.

Penalty for neglect of duty.] Any overseer whose duty it is to provide for the support of any bastard and the sustenance of its mother, who neglects to perform such duty, is deemed guilty of a misdemeanor; and on conviction is liable to a fine not exceeding two hundred and fifty dollars, or to imprisonment, not exceeding one year, or to both.

Compromise.] In the city of New-York, the commissioners of the Alms House and Bridewell, are authorised to compromise with the putative fathers of bastard children, upon such terms as shall be just, and discharge such fathers from liability. Superintendents in any county have the like power. *Laws of 1832, chap. 26, and Laws of 1838, chap. 202. 3 Hill, 116.*

When the mother of such child is unable to give such security, but is able and willing to nurse and take care of the child, she must be paid the same weekly allowance for nursing and taking care of the child, out of moneys paid by the father on such compromise, as he shall have been liable to pay by the order of filiation; such weekly sum to be paid the mother, may be prescribed, regulated or reduced, as in the case of an order of filiation.

It seems an action will not lie however in behalf of the mother against the overseers, without showing an express promise to pay, or that the overseers had received money under the order. 12 J. R. 195.

In suits against overseers, founded on a contract made by their predecessors, for the maintenance

of a bastard, the justice's order for the expenditure must be proven. *Morse v. Earle*, 13 *Wend.* 271.

An action may be maintained upon a bond given to indemnify a town concerning a bastard, pursuant to statute, as soon as the town becomes liable or bound to maintain the child, without showing any actual disbursement or payment of money by the town. *Rockfeller v. Donnelly*, 8 *Cow.* 623. 8 *Wend.* 520.

As to what will be deemed sufficient evidence of expenditure, in an action on a bastardy bond, in cases where no order of filiation has been made, see opinion of Chancellor Jones in same case.

In an action founded on such an order, it (the order) is *prima facie* evidence of the plaintiff's demand, and it devolves on the defendant to show a reversal or modification of the order, or any other matter which tends to discharge it. *Wallsworth v. Mead*, 9 *J. R.* 367; 16 *J. R.* 155. Infancy is no defence to an action on a bond given by the reputed father of a bastard child, conditioned to indemnify the town. *The People v. Moore*, 4 *Denio*, 519. 6 *Mass. Rep.* 80; 4 *id.* 376. 25 *Wend.* 698.

SECTION 7. DUTY OF OVERSEER IN RELATION TO BINDING OUT CHILDREN.

Authority is conferred on overseers of the poor, to bind out any male child under the age of twenty-one years, and any female child under the age of eighteen years, with the consent of the persons authorized by law to give the same, who, or whose parent becomes chargeable to such town, or who may have been sent to any poor house other than a county poor house.

The written consent of any two justices of the peace of the town, or of the mayor, recorder, and aldermen of a city, is necessary to make such binding out valid.

Indian children.] The overseer has no authority to bind the child of an indian woman as an apprentice, except in the presence and with the written consent of a justice of the peace, and the consent must be filed in the town clerk's office of the town where the indenture is executed.

Indentures, what to contain.] The age of every infant so bound must be inserted in the indentures, and will be taken to be the true age, without further proof; and whenever any public officers are authorized to execute any indentures, or their consent is required to the validity of the same, it is their duty to inform themselves fully of the infant's age.

Every sum of money paid or agreed for, with, or in relation to the binding out of any clerk or apprentice, must be inserted in the indentures.

Whenever any child is bound out by the overseers of the poor of any city or town, the indentures must contain an agreement on the part of the person to whom such child is bound, that he will cause such child to be instructed to read and write, and if a male, will cause him to be instructed in the general rules of arithmetic; and every such indenture must also contain an agreement, that the master will give to such apprentice, at the expiration of his or her service, a new Bible.

The counterpart of any indentures executed by any overseers of the poor, must be by them de-

posited in the office of the clerk of their city or town. 2 R. S. 154; 4th ed., 339. (*See form of indenture and consent, Appendix, No. 49.*)

The consent required by the statute to be given on the binding of an apprentice, must be a certificate at the *end of* or *endorsed upon* the indentures. 2 Hill, 596. *See also* 5 Cow. 170.

SECTION 8. ACTIONS BY AND AGAINST OVERSEERS AND THE BODIES THEY REPRESENT.

Actions may be brought by overseers of the poor of the several towns, to enforce any liability, or any duty enjoined by law to them, or the body they represent, and upon any contract made with them or their predecessors in their official character; to recover any penalties or forfeitures given to them, and to recover damages for any injury done to the property or rights of such offices.

Contracts with predecessors.] Such actions may be brought by such overseers in the name of their respective offices, notwithstanding the contract or obligation on which the same is founded, may have been made with or to any predecessors of such overseers, in their individual names or otherwise, and notwithstanding any right of action may have accrued previous to the time when the officers commencing such suit entered upon the execution of the duties of their office.

Actions against.] Actions against overseers should be commenced in the same manner as against individuals, specifying in the process and pleadings their names of office. They are not liable to be held to bail unless upon the order of a judge of the court in which the action is commenced,

founded upon proof by affidavit that the same is brought for some personal misconduct in office, or upon some personal liability in their official character. 2 R. S. 474; 4th ed., 715.

Where a suit is brought by an overseer of the poor, it should be commenced in his proper name, with the addition of his name of office. A suit in the name of office merely, cannot be maintained. 5 Hill, 215. 1 Denio, 279.

Overseers of the poor being public agents and trustees of the town, in respect to the poor, without any express authority by the statute for the purpose, have a capacity to sue co-extensive with their public trusts and duties. *Overseers of Pittstown v. Overseers of Plattsburgh*, 18 John. 407. *Supervisor of Galway v. Steinson*, 4 Hill, 136.

The general rule is that when a public officer is instituted by the legislature, an implied authority is conferred on the officer to institute all suits as incident to his office which the proper and faithful discharge of his official duty requires. 18 John. 407.

Suits by and against overseers, do not abate by their death, removal, resignation, or the expiration of their term of office. The names of their successors will be substituted, upon the application of such successors or the adverse party.

In case judgment should be rendered against the overseers of the poor, on account of any liability of their town, they should present a certified copy of the docket of such judgment, or the record of the same, to the board of supervisors of the county, at the annual meeting of such board.

When the overseers of the poor of a town against whom any judgment has been rendered, which has not been appealed from, nor otherwise suspended, have sufficient moneys in their hands belonging to their town, not specially appropriated, they are required to pay the amount of such judgment and interest, upon the production of a certified copy of the docket of such judgment. Should he fail so to do, he becomes personally responsible to the party in whose favor such judgment was obtained.

Costs.] When costs have accrued against overseers, as the result of unsuccessful litigation commenced by them in their individual names, execution may be awarded against them, and the costs collected of them individually; they may charge the same in their account for official expenditures, which will be audited and allowed to them if it appear that they commenced the litigation in good faith.

SECTION 9. DUTY RESPECTING JUGGLERS, DISORDERLY PRACTICES, ENFORCING PENALTIES FOR BETTING, RACING OF ANIMALS, &C.

It is the duty of the overseers of the poor, to sue for the penalty which is incurred for the violation of the statute against the exhibition of idle shows. The penalty is twenty-five dollars for each offence. See 1 R. S. 666; 4th ed., 2d vol., 70.

The penalty of five dollars is incurred by any person who violates the statute against the discharge of fire arms, rockets, and other fire works on certain holidays; and the penalty of twenty-five dollars is incurred for the violation of the stat-

ute against keeping gaming tables, wheels of fortune or the like, within half a mile of any parade, town meeting, election or celebration. The penalty is ten dollars for the violation of the statute against cock fighting, and gaming of any kind, in any public house kept as an inn or tavern, or in a grocery, or on board of any vessel or packet used for the transportation of passengers. Persons playing at games of any kind, who win money or property, forfeit five times the value of the money or property won at any one time.

Persons playing at games, or betting, who loose twenty-five dollars or more, at any one time or sitting, and shall pay or deliver over the sum lost, or any part of the same, may within three months recover the same back by action. If the party losing omit to prosecute, the winner becomes liable to pay treble the value of property won to the overseer. 1 *R. S.* 661; 4th ed., vol. 2d, 70-73.

Any person who sets up any property to be raffled for, forfeits three times the value of the articles so set up, together with ten dollars in addition. The person raffling forfeits ten dollars for each offence. 1 *R. S.* 665; 4th ed., vol. 2d, 76, 77.

It is made the duty of the overseers of the poor to prosecute for any of the penalties above mentioned. The superintendents of the poor have also the right to prosecute for many of the above penalties. Their duties in that respect will be mentioned in that chapter. It is also made the duty of the overseer, to prosecute for the breach of a recognizance given by a disorderly person. 1 *R. S.* 639; 4th ed., vol. 2d, 54.

It is also their duty to prosecute for the violation of the law respecting brokerage, and unauthorized banking. 2 *R. S.* 115, 116, 119, 4th ed.

The penalty of twenty-five dollars is incurred for a violation of the statute against the racing of animals. There are a number of forfeitures therein mentioned, for the violation of that statute, for all of which the overseers are to prosecute. 2 *R. S.* 4th ed., 80.

Because the foregoing penalties are specially enumerated, it does not follow that the duty of the overseer is limited to bringing actions for those penalties only, his general power in that respect has been mentioned at page 222. See also 18 *Johns.* 407.

SECTION 10. MISCELLANEOUS PROVISIONS.

It is the duty of the overseers of the poor, in each town, to furnish the superintendent of common schools with a list of the deaf and dumb persons in their respective towns, so far as they can ascertain them, with such particulars in relation to the condition of each as shall be prescribed by the superintendent. *Sec. 1, chap. 223, of 1832.*

The limits prescribed for the present work, will not admit of the insertion of the numerous local acts affecting the duty of overseers of the poor. It has been deemed sufficient to refer those officers in the several localities affected by local provisions, to the chapter of the session laws where such local statutes may be found.

For the special act affecting the poor laws, relating to the county of Genesee. See *Laws of 1839, chap. 121.*

For Lewis county. *See Laws of 1842, chap. 81; also Laws of 1845, chap. 7.*

For the counties of Herkimer, Tioga and Saratoga. *See Laws of 1843, chap. 208.*

For the counties of Jefferson, Chautauque, Cattaraugus, Otsego and Steuben. *See Laws of 1844, chap. 163.*

For the counties of Essex, Oneida and Dutchess. *See Laws of 1845, chap. 155.*

For the counties of Livingston, Sullivan, Broome, Cortland, Orange, Allegany, Seneca, Franklin, Onondaga and Ulster. *Laws of 1848, chap. 176.*

These several special acts relate mostly to abolishing or restoring the distinction between town and county poor.

A general law was passed in 1849, (*see Laws of 1849, chap. 194,*) authorising boards of supervisors to abolish the distinction between town and county poor. *See the chapter on boards of supervisors, ante, page 35.*

In 1845, an act was passed respecting the mode of supporting the poor in the county of Livingston, (*Laws of 1845, chap. 334,*) and in 1846, an act was passed providing that whenever the board of supervisors of any county, except the county of New-York and county of Kings, should by resolution declare their intention to adopt the provisions of the act relating to the temporary relief of the poor in the county of Livingston, that the provisions of the act relating to Livingston county should apply to such counties. *Laws of 1846, chap. 245, p. 308.*

The overseers of the poor in the several towns in the county of Onondaga, are not allowed to be interested in any of the supplies furnished or ordered by them. *Laws of 1852, chap. 231, sec. 5.*

The office of overseer of the poor is abolished in the county of Fulton, and the duties of that officer are devolved upon the supervisor of the town. *Laws of 1855, chap. 497.*

Compensation.] Overseers of the poor are entitled to one dollar a day for the time spent by them in the discharge of their duties.

In presenting their accounts to be audited, the same should be accompanied by an affidavit of their correctness. (*See form, Appendix.*) 1 R. S. 664, 4th ed.

CHAPTER VIII.

OF COMMISSIONERS AND OVERSEERS OF HIGHWAYS.

SECTION 1. Of the commissioner—how elected, and his powers and duties generally.

2. Commissioners' duty respecting the laying out, opening, altering, and discontinuing of highways.
3. Overseers of highways, how chosen, and their powers and duties.

SECTION 1. OF THE COMMISSIONER, HOW ELECTED AND HIS POWERS AND DUTIES.

The duties of the commissioner of highways are so intimately connected with those of the overseer, that it has been deemed advisable to embrace the two in the same chapter.

Election and qualification.] The commissioner of highways is elected by ballot at the annual town meeting. If the town at that meeting neglects to

fill that office, he may be appointed by three justices of the peace. He must be an elector of the town. Within ten days after notice of his election, he must take and subscribe the constitutional oath. (*See form, Appendix, No. 1.*) If his name appears on the poll list of the annual town meeting, that is deemed sufficient notice of his election.

When duly elected or appointed, should he refuse to serve, he forfeits to the town the sum of fifty dollars; and should he enter upon the duties without taking and filing the constitutional oath, he forfeits the further sum of fifty dollars. 1 R. S. 347; 4th ed., 656.

The electors at the annual town meeting, determine whether they will have one or three commissioners of highways. If three be determined upon, the canvassers divide them by lot into classes, numbered one, two, and three, and they hold their offices accordingly. *Laws of 1847, chap. 455, p. 580.* 1 R. S. 646, 4th ed.

When one chosen, he does the duty of three.] If but one commissioner be determined upon and chosen, he is clothed with all the powers, and must discharge all the duties devolving upon the three. *Id.*

In such case, where the term *commissioners* is used in the text or forms, the sole commissioner will readily adapt the text and forms to his case, reading the text as if the plural were not used, and using one name in the forms wherever more than one occurs.

After a resolution of a town, determining to have three commissioners, the town may by a subse-

quent resolution, determine to have but two or one ; and if such subsequent resolution be adopted, no other commissioner can be elected or appointed, until the term of office of those already elected expires. *Laws of 1847, chap. 455, p. 581.*

In case of vacancy, if the commissioner is *appointed*, he holds until the next annual town meeting after his appointment, if *elected*, he holds for the unexpired term. *Id.*

Before the commissioner enters upon the duties of his office, and within ten days after notice of his election or appointment, he must execute a bond to the supervisor of the town, in the penal sum of one thousand dollars, with two sureties to be approved by the supervisor. (*See form of bond, Appendix, No. 185.*) *Laws of 1845, chap. 180, p. 183.*

Should the commissioner desire to resign his office, he may give notice of his intention so to do, to any three justices of the peace of the town, who have power to accept the same. (*See form, Appendix, No. 186.*)

Repairs.] The commissioners of highways have the care and superintendence of highways and bridges in their several towns. It becomes their duty, by statute, to give directions as to the mode in which the roads and bridges of their town shall be repaired. 1 *R. S.* 510 ; 4th ed., 1029.

They are not bound to repair until the necessary funds are provided. 7 *Wend.* 474. 2 *Hill*, 619 ; 6 *Id.* 463. 17 *John.* 439.

They have no power to contract a debt against the town for the purpose of repairs. *Barker v. Loomis*, 6 *Hill*, 463.

The general power above mentioned, it seems, would not authorise the commissioners to bring a suit by virtue of their office, to recover damages for illegally taking possession of a highway or bridge. *Cornel v. Town of Guilford*, 1 *Denio*, 511. Judge Jewett who delivered the opinion in that case, held that such a suit should be brought in the name of the town.

Power to regulate, alter, and describe roads.] Power is also given by statute, to the commissioners, "To regulate the roads already laid out, to alter such of them as they, or a majority of them, shall deem inconvenient.

"To cause such of the roads used as highways as shall have been laid out, but not sufficiently described, and such as shall have been used for twenty years but not recorded, to be ascertained, described, and entered of record in the town clerk's office; and,

"To cause the highways and bridges which are or may be erected over streams intersecting highways, to be kept in repair."

In ascertaining the duties of commissioners under the foregoing provisions, it frequently becomes necessary to determine where the powers of commissioners cease, and that of the trustees of villages, and the common councils of cities, begin to be operative, under the numerous village and city charters. In many village charters, the trustees have the same power over the streets and bridges that is possessed by commissioners of highways, and no more. In some village charters, the power conferred upon trustees, is merely

additional to that already conferred upon the commissioners. *See the opinion of chief-justice Nelson in the case of Graves v. Otis, 2 Hill, 471. See also 10 Wend. 86; 15 Wend. 241; 12 Wend. 359.* Under the power to regulate and alter roads, it seems that the commissioners have a right to cut down and grade streets, although by so doing, the buildings and premises adjoining such grading, would suffer indirect or consequential damages, provided such grading or alteration was done in good faith and without malice. *Radcliff's executors v. Mayor of Brooklyn, 4th Coms. 195. See also 14 Barb. 629.*

The statute prescribes that the commissioners shall divide their towns into as many road districts as they shall judge convenient, which division or designation must be in writing, and lodged in the town clerk's office, and recorded in the town book. (*Form for order dividing town into districts, see Appendix, No. 109.*) This division if deemed necessary may be made annually, and in all cases, should be done at least ten days before the annual town meeting.

They must assign to each of the road districts, such of the inhabitants liable to work on the highways, as they may deem proper, having reference to proximity of residence.

They have power, and are required to order the overseers of highways, as often as shall be deemed necessary, to warn persons liable to work on the highways, to come and work with such teams and implements as the commissioners, or any one of them, may determine.

They have the power under the restrictions

which will be hereafter mentioned, to lay out on actual survey, such new roads in the towns, as they shall deem necessary and proper; and to discontinue such old roads as shall appear to them on the oaths of twelve freeholders to be necessary to be discontinued. Their powers and duties in this respect, are defined at length under section two of this chapter.

They are required to render an account to the board of town auditors, at their annual meeting, stating the labor assessed and performed in their town; the sums received from fines and all other sources; and a statement of the improvements made during the year, and the state of the roads, together with a statement of the improvements necessary to be made, and an estimate of the probable expense of the same over and above the labor to be assessed. (*See form for this statement and account to town auditors, Appendix, No. 124.*)

The commissioners must deliver to the supervisor of their town, a statement of the improvements necessary to be made on the roads and bridges of their town, and an estimate of the probable expense of the same. (*See form for statement to supervisor, Appendix, No. 125.*)

The board of supervisors may levy upon a town from which such statement may have been received, in any one year, a tax not exceeding \$250. *See the chapter upon the boards of supervisors. See also 1 Hill, 53.*

Additional appropriation.] In 1832, an act was passed authorizing the sum of two hundred and fifty dollars additional, to be raised in those

cases where the commissioners are of the opinion that the \$250 above provided for will be insufficient to pay the expenses actually necessary for the improvements of roads and bridges. For this appropriation, the commissioners should apply in open town meeting, for a vote authorising such additional sum. Before making the application, notice of the same should be given by posting the same in five of the most conspicuous places in the town, for at least four weeks preceding the annual town meeting. *Laws of 1832, chap. 274, p. 480. 1 R. S. 647, 4th ed. (For form of this notice, see Appendix, No. 187.)*

There may be the further sum of five hundred dollars placed at the disposal of the commissioners under the act of 1838. *Laws of 1838, chap. 314. See the foregoing chapter upon the powers of boards of supervisors, page 48.*

The commissioners may have the further sum of four thousand dollars placed at their disposal, under the act of 1849, chap. 194.

Mile stones.] They have the power to erect mile stones on post roads, and such other public roads as they may deem proper.

Guide boards.] It is their duty to erect guide posts with proper inscriptions and devices, at the intersection of the post roads and other roads, when they shall deem the same necessary.

Scrapers.] They may direct the overseers of highways, to procure scrapers and plows for the use of the road districts.

To appoint overseers.] The commissioners have the right in case an overseer refuses to serve, or in

case of a vacancy in that office, to appoint by warrant in writing, some one in his stead. The appointment must be filed forthwith in the office of the town clerk. The commissioners should attend to the filing of such appointment, and the town clerk immediately notify the person appointed. (*Form for appointment of overseer, Appendix No. 110.*)

To prosecute default by overseer.] The commissioners upon complaint of any resident of the town, that any overseer of highways has refused or neglected to perform the duties required by law, must prosecute such overseer for the penalty incurred by such neglect, or refusal, provided the complainant executes a bond to such commissioners, or gives security to indemnify them against the costs that may be incurred for prosecuting for such penalty. 1 R. S. 505, sec. 17; 4th ed. 1032. (*For form of bond to commissioners under sec. 17, see Appendix, No. 127.*)

Should the commissioner neglect to prosecute for such penalty, he forfeits ten dollars to the person making such complaint. *Id.*

Commissioners have power to administer oaths to jurors and witnesses in proceedings before them. *Laws of 1847, chap. 455.*

Duty respecting plank roads, turnpikes and railroads.] The commissioner, when associated with the supervisor of the town, or a majority of them, if there be more than one commissioner, may with the consent of two-thirds of the owners of land along the line of a highway, where it is proposed to build a plank or turnpike road, agree with the company upon the damages. Such agreement

must be in writing, and filed and recorded in the town clerk's office. (*Form of release of right of way by commissioners and supervisors, see Appendix, No. 115.*)

The funds arising from such source, are at the disposal of the commissioners. *Laws of 1847, chap. 210, p. 223, and Laws of 1850, chap. 71.*

The duty in regard to repairs, when a public highway has been transferred to such a corporation, is devolved upon such body. 3 *Barb.* 459.

The commissioners should enforce the due observance of the law upon plank and turnpike roads.

It becomes their duty to apply for a change in the location of toll gates, when they deem that any location is unjust to the public interests. This application should be made to the county court, upon fifteen days' notice in writing to the president or secretary of the company.

Either party aggrieved by the decision of the county court, may appeal to the supreme court. *Laws of 1847, chap. 210.*

Commissioners are clothed with power to consent in writing that railroads may cross the public highways in their town, but streets thus intersected must be restored to their former state, so as not to impair their usefulness. *Laws of 1835, chap. 300. (Form of consent that railroad may cross highway, Appendix, No. 116.)*

Majority may act.] Orders and determinations may be made by two commissioners, notwithstanding there may be three in the town; but in such case, it must appear in the order filed, either that all three met and deliberated on the subject

embraced in the order, or were duly notified to attend. 1 *R. S.* 525; 4th ed., 1054. An order made disregarding this requirement is void, 22 *Wend.* 132.

Commissioners have power to invest public money upon unquestionable security, when not wanted for immediate use, so as to realize the interest upon the same. 5 *Hill*, 215.

Fence viewers.] The commissioners, together with the assessors, are fence viewers of the town. 1 *R. S.* 340; 4th ed., 646.

Actions.] The commissioners may maintain actions for the breach of a contract made with them or their predecessors in their official capacity; also to enforce any liability or duty enjoined by law, to them or their town; also to recover penalties, and to recover damages for injuries done to them, or their rights, or to the towns they represent, affecting their official duties. 2 *R. S.* 473; 4th ed., 715.

In suits brought by or against the commissioners, the individual name of the officer should be used, with the addition of his name of office. 4 *Hill*, 136. 5 *Hill*, 215. And though not expressly authorised by statute in terms, in any given case, yet the authority to sue is commensurate with their public trusts and duties. *Id.* Also 18 *John.* 407. 1 *Denio*, 510. 1 *Cow.* 260. 3 *Wend.* 193; 7 *Id.* 181; 19 *Id.* 50. See also chap. 7, page 223.

They are liable on the lawful contracts of their predecessors. 2 *R. S.* 474; 4th ed., 715. 13 *Wend.* 271.

Execution issues against them, the same as

against individuals, and is collected in the same way; the amount so collected must be allowed to them in their official accounts. 2 *R. S.* 476; 4th ed., 717. 7 *Wend.* 181.

May compromise disputes.] They have the right to negotiate amicable settlement of controversies relating to encroachments upon highways, and promissory notes or other securities taken on such settlements are valid, and may be enforced by action. 5 *Hill*, 215.

They should file in the town clerk's office a list of the swinging or other gates allowed by law on any public highway. 1 *R. S.* 524; 4th ed., 1052.

The commissioners must pay over to their successors, any moneys that may be in their hands at the expiration of their term of office. If dead their executors or administrators must pay over. 1 *R. S.* 359; 4th ed., 667.

Fire in forests.] Where danger is apprehended from fire in the woods, it becomes the duty of the commissioners to act with the supervisor and justices of the peace, in taking measures to arrest its progress. 1 *R. S.* 697; 4th ed., vol. 2, 107. See also *ante*, Chapter I, p. 7.

When to meet.] The commissioners are required to meet within eighteen days after they are chosen, at the place of the town meeting. When there is but one commissioner, he should attend at the same place. The object of this meeting is to make the assessment for highway labor.

Mode of assessment.] In making the assessment they first, (at their first or some subsequent meeting,) make out a list of all of the lots or parcels of

non-resident lands within their town, and describe the same as assessors do. (*See Chapter V, Assessors.*) The value must be set down opposite to such description, and must be the same as that affixed to the lot in the last assessment roll, and if not separately valued on such roll, then the valuation of a separate lot should be in the proportion that such lot bears to the whole. (*Form for list of non-resident lands, see Appendix, No. 112.*)

The commissioners having received the overseers' lists from the town clerk, proceed to make their assessments as follows :

1. The whole number of days work to be assessed in each year must be ascertained, and must be at least three times the number of taxable inhabitants in the town.

2. Every male inhabitant being above the age of twenty-one years, (excepting ministers of the gospel and priests of every denomination, paupers, and idiots and lunatics,) must be assessed at least one day.

3. The residue of such days' work must be apportioned upon the estate, real and personal, of every inhabitant of the town, as the same appears by the last assessment roll of the town, and upon each tract or parcel of land, of which the owners are non-residents, contained in the non-resident list.

4. If, after such apportionment, there is any deficiency in the number of days' work determined by the commissioners to be performed in their town, the then ensuing year, such deficiency may be assessed upon the estates, real and

personal, of the inhabitants of the town, and upon each tract or parcel of land of which the owners are non-residents, according to the last assessment roll.

5. The commissioners must affix to the name of each person named in the list furnished by the overseers, and also to the description of each tract or parcel of land contained in the list prepared by them of non-resident lands, the number of days which such person or tract is assessed for highway labor, as herein directed, and subscribe such lists and file them with the town clerk. (*Form for certificate of assessment of highway labor, see Appendix, No. 113.*)

In making the assessment, they must include all money and stock corporations which appear on the last assessment roll of the town. Such corporations are entitled to notice of the time when they will be required to perform their highway labor; such notice to be served on some officer or managing agent of the corporation. The commissioners may assign the district in which such corporation labor is to be performed; they may not require more than fifty days to be done in any one day.

Corporations may commute like individuals, and the commutation money may be expended by the commissioners in any district, or districts, at their discretion.

Suits against corporations.] Commissioners may sue for penalties incurred by corporations, the same as against individuals. They may file a bill in the supreme court to enforce such penalties,

and prosecute the same to judgment. *Laws of 1837, chap. 431. 1 R. S. 1035, 4th ed.*

May correct omissions of assessors.] Where assessors have omitted persons or property in their assessment roll, the commissioners may assess the persons and property omitted, and apportion the highway labor on the same, with the same effect as if they had been assessed by the assessors. *Id.*

Copies of lists.] The commissioners after having directed the town clerk to make a copy of each list, must subscribe the same, and deliver the lists to the respective overseers of highways of the several districts.

Non-residents may appeal.] Non-residents considering themselves aggrieved by the assessments made by the commissioner, may appeal to the county judge, who must decide the same within twenty days after the appeal, and his decision is final. *1 R. S. 1036, 4th ed. Laws of 1847, chap. 280, sec. 29.*

Labor done on private roads.] The commissioners may credit the amount of labor done by persons living on private roads, on their assessments.

Separate assessments.] When commissioners assess the occupant of land not owned by such occupant, they should distinguish in their assessment lists, the amount charged upon such land from the personal tax of the occupant, if any, and if the land is assessed in the name of the occupant, the owner should not be assessed for the same.

The inhabitants of any road district, may grade, gravel, or plank the roads in their district, and for that purpose may anticipate the highway labor of

such district for one or more years, and apply the same to the immediate construction of such roads. *Laws of 1849, chap. 250, sec. 12; also 1 R. S. 1036, 4th ed.*

SECTION 2. DUTY OF THE COMMISSIONERS RESPECTING THE LAYING OUT, OPENING, ALTERING, AND DISCONTINUING OF HIGHWAYS.

Before entering upon the duties of the commissioner in this respect, it is proper to state some general principles in regard to highways.

How created.] Highways may be created as follows:

1. By dedication.
2. By twenty years use.
3. By being laid out according to statute.
4. By special statute.

On the subject of highways by dedication, Chancellor Kent lays down a rule which may be abbreviated and stated as follows: "That in the absence of all other evidence on the part of the owner of the soil to dedicate it to the public, except a naked acquiescence in the use on the part of the public, twenty years would be required to constitute a dedication; but if there were clear, unequivocal, and decisive acts of the owner, amounting to an explicit manifestation of his will to make a permanent dedication of the road, those acts would be sufficient to establish the dedication in a shorter period. 3 *Kent's Com.* 451. The same doctrine is held in the case of *Pritchard v. Atkinson*, 4 *N. H. Rep.* In that case seventeen years was held to be a sufficient period to amount to a dedication. In one case eight years was deemed sufficient to establish a dedication, 11 *East*, 395;

see also *Wyman v. New-York*, 11 *Wend.* 486; 4 *Paige* 510; 3 *Vermont Rep.* 519; 19 *Pick.* 405; *Smith's Leading cases*, vol. 44 *Law Library*, 1; 2 *J. R.* 424.

[*By twenty years use.*] It is provided that all roads, although not recorded, which have been used as public highways for twenty years or more, shall be deemed public highways. 1 *R. S.* 521; 4th ed., 1049.

It is the duty of the commissioners to ascertain, describe, and record the unrecorded roads of their town. They have no power to say what was the intention of the owner of the soil, any further than the intention is manifest from the user. 24 *Wend.* 491. 7 *J. R.* 106. (*Form of order for ascertaining and describing a road, Appendix, No. 141, A.*)

[*Laying out, altering, or discontinuing roads.*] The first step to give the commissioners jurisdiction in a given case, is the application. *Harrington v. The People*, 6 *Barbour*, 607.

The application must be in writing. (*See form, Appendix, Nos. 128 and 132.*) It must be made by a resident of the town liable to be assessed for highway labor. It may be made by a non-resident, liable to be assessed for such labor, provided the application relates only to his own lands. 1 *R. S.* 1041, 4th ed. When it is proposed to lay a highway through enclosed, improved, or cultivated lands, the applicant must cause notices to be posted up in three of the most public places in the town, specifying the route of the proposed road, the several tracts of land through which it will pass, and the time and place at which at least twelve freeholders of the town will meet to exam-

ine the ground. (*Form of notice, Appendix, No. 133.*) This notice must be posted up at least six days before the meeting of the freeholders. Great care should be taken in drawing the application, because the jury who are to certify, are confined substantially to the route named in the application. Hence the termini of the proposed road and the several parcels of land through which it is to pass, should be defined with much accuracy. 1 *Cow.* 23, and *Hallock v. Walsey*, 23 *Wend.* 327.

Proceedings of freeholders.] Upon the appearance of twelve reputable freeholders of the town, not interested in the lands through which the road is to be laid, they must be sworn. (*Form of oath, Appendix, No. 135.*) The oath may be administered by a justice of the peace, highway commissioner, or any person authorized to administer oaths. The jury then personally examine the route, hear the reasons pro and con., and if of opinion that the highway is necessary, certify the fact in writing, and deliver their certificate to the commissioners. Should more than twelve freeholders sign the certificate, it would not thereby be vitiated.

Should some certify who are not qualified, so long as at least twelve certify who are, the proceedings would be regular. 7 *Wend.* 264. (*Form of certificate of freeholders, Appendix, No. 136.*)

Notice to occupant.] The next step, and before the highway is laid out, the commissioners must notify the occupant of the land through which the road is to run, of the time and place where they will meet to decide upon the matter. They must

see that he has at least three days notice, which must be served upon him personally, or by leaving the same at his dwelling. (*Form of notice to occupant, see Appendix, No. 137.*)

Description of the road.] The commissioners meet at the time specified, to hear what is to be said, and decide. If they determine to lay out the road, they cause it to be surveyed and described by metes and bounds, courses and distances, and make a certificate of their decision, incorporating into the same such survey and description, and deposite their decision with the town clerk. 1 R. S. 515; 4th ed., 1042.)

The survey need not specify the bounds of each course. 23 Wend. 324. (*Form of order, laying out highway through improved lands without the consent of the owner, Appendix, No. 138.*)

Damages.] The next step is to ascertain the damages and provide for payment.

Should the owner and commissioners agree that the damage is less than one hundred dollars, the commissioners may pay such damage without further proceedings.

The owner if disposed may release all claim for damages. Such release must be filed in the town clerk's office. If the damages cannot be ascertained by agreement, and the owner refuses to release, they must be assessed before the road is opened or worked. (*Release of damages or agreement, Appendix, Nos. 140 and 141.*)

Damages, how assessed.] Such damages are to be assessed by not less than three commissioners, to be appointed by the county court of the county,

on the application of the highway commissioners. (*Form for such application, Appendix, No. 151. Form for appointment of commissioners, Appendix, No. 152.*)

The commissioners thus appointed take the constitutional oath, and upon receiving six days notice of the time and place where they are required to meet, convene, view the premises, hear the parties, swear the witnesses produced, if any, and assess the damages. The assessment agreed upon by a majority is valid. (*Form for notice to commissioners of their appointment and oath, Appendix, Nos. 153, 154.*)

They make their order in writing, and deliver the same to the highway commissioners, who must file the same in the town clerk's office within ten days after its delivery to them. (*Form of order assessing damages, Appendix, No. 155.*)

Where a highway is laid out along the line of a farm, taking no portion of the land of the owner, but subjecting him to the expense of maintaining the whole of a fence, one *half* of which only was formerly maintained by him, such owner is not entitled to compensation, and should damages be allowed, the supervisors of the county have no authority to cause the same to be collected. *The People v. Supervisors of Oneida*, 19 Wendell, 102.

Parties aggrieved may ask for re-assessment.] The persons for whom the assessment was made, or the commissioners, feeling aggrieved, may, within twenty days after the filing of the order above mentioned, serve a notice on the town clerk and

the opposite party, (*Form, Appendix, No. 156,*) asking for a jury to re-assess the damages; and specifying a time not less than ten, nor more than twenty days from the time of filing the assessment, when such jury will be drawn at the town clerk's office of an adjoining town, by such clerk. The notice must be served upon the opposite party within three days after service on the town clerk, either by personal service, or leaving the same at the dwelling house of the party, with some person in charge; or if the house be closed and vacant, by fixing the same on the outer door. Such town clerk having received three days previous notice from the person asking the re-assessment, that such jury is to be drawn, deposits in a box the names of the last jury list in his office, residents of his town, who are not interested nor of kin to the parties, and draws therefrom the names of twelve persons as jurors, and makes a certificate of the drawing, and of the purposes for which they were drawn, and delivers the same to the persons first asking the re-assessment. (*Form of the certificate of the drawing of the jury, Appendix, No. 159.*)

. *Jury when summoned.*] Within twenty-four hours after the party receives the certificate, he should apply to a justice of the peace, of the town where the damages are to be assessed, to issue a summons for the persons named in the certificate. The justice forthwith must issue a summons for such persons, in which he must specify the time and place of meeting, which must be within twenty days from the time of the filing of the assessment of damages, and deliver the same to a constable

forthwith, to be executed. (*Form of summons to the jury, Appendix, No. 158.*)

Upon the appearance of the persons summoned, the justice draws by lot six, to serve as a jury, provided they are free from legal exceptions.

The jury must be sworn. They hear the parties, view the premises, and render their verdict in writing; which, after being certified by the justice, and delivered to the commissioners of highways of the town, is final. (*Form of verdict of jury, see Appendix, No. 160.*)

Land owners have a vested right in the sums so awarded to them, and may compel by mandamus the board of supervisors, to cause the same to be raised and paid to them. *The People v. the Supervisors of Westchester*, 4 Barb. 64. *Laws of 1847, chap. 455.* 1 R. S. 1044, 4th ed.

Costs.] When damages are assessed by commissioners appointed by the county court, the costs are to be paid by the town in which the assessment is made, and in cases of reassessment by a jury at the instance of the commissioners, when the first assessment is thereby reduced, the costs must be paid by the party claiming the damages, otherwise by the town.

In case of reassessment at the instance of a party claiming damages, if he fails to get the damages increased, he must pay the costs; but when such damages are increased by the jury, the town must pay the costs. Jurors from an adjoining town, summoned, who attend but do not serve, are entitled to fifty cents; those serving one dollar; if from the same town, attending and not

serving, twenty-five cents ; serving fifty cents. *See Laws of 1847, chap. 455, sec. 7 and 19. 1 R. S. 1044, 4th ed.*

Damages to be audited by the board of supervisors.] All such damages finally assessed or agreed upon by commissioners, relating to the laying out of roads, except private roads, must be laid before the board of supervisors, by the supervisor of the town, to be levied by such board, and collected in the town where the highway is situated, and paid to the commissioners, who are required to pay the owner the sum assessed to him, and the expenses. *1 R. S. 1044, 4th ed. Also see, 7 Barb. 297 ; 19 Wend. 103.*

When a road is discontinued by reason of some other road being established through the lands of the same person, in assessing the damages, the value of the road discontinued should be taken into the account, and such value may be deducted from the damages assessed for the laying out of the new road, and the owner may enclose so much of the road discontinued as shall belong to him.

Disputes between commissioners of different towns.] When the commissioners of any town disagree with those of another town in the same county, respecting the laying out of a new road, or the alteration of an old one extending into both towns ; or when the commissioners of any town in one county disagree with those of any town in another county upon such a matter, the commissioners of both towns must meet at the request of either party, and make their determination upon such

disagreement. (*Form of order of commissioners of adjoining town, Appendix, No. 163.*)

Road on a line between two towns.] When it is proposed to have a road on a line between two towns, such road must be laid out by two or more of the commissioners of each town; whether the road shall follow or vary from the line is to be determined by the good sense of the commissioners.

They must divide the same into road districts, so as to equalize all the expenses incident to the road as nearly as may be, and allot an equal number of districts to each town.

The commissioners must file the allotment in their respective towns. The districts allotted to each town are to be considered as wholly belonging to such town. 1 R. S. 1045, 4th ed.

Roads not to be laid through orchards, nor fixtures, nor buildings.] No public or private road can be laid through any orchard or garden, without the consent of the owner, if such orchard be of the growth of four years, or more, or if such garden has been cultivated for four years or more, before the proposed location of the road.

No such road can be laid through any buildings or any fixtures or erections for the purpose of trade or manufacture, or through any yards or enclosures necessary to the use and enjoyment thereof, without the consent of the owner. 1 R. S. 514; 4th ed. 1041.

Where commissioners laid a road through a mill yard, and the tenter-bars of a fulling mill, they were held to be liable to the owner in trespass. *Clark v. Phelps*, 4 Cow. 190. See also *Lansing v. Caswell*, 4th Paige, 523.

Should any one move a building on to the line of a proposed road, after the application to lay out the road had been duly made and notice given, for the purpose of defeating the road, the commissioners notwithstanding would have a right to lay the road through such building. 2 *Hill*, 443.

As to what shall be deemed an orchard within the meaning of the highway act, see *The People v. the Judges of Dutchess*, 23 *Wend.* 360.

No highway can be laid out through enclosed, improved, or cultivated land, without the consent of the owner or occupant, unless certified to be necessary by the oath of at least twelve reputable freeholders of the town. 1 *R. S.* 514; 4th ed., 1041.

While it is better at all times to have the consent of the owner in *writing*, it is not absolutely necessary that it should be. *Noyes v. Chapin*, 6 *Wend.* 461.

[*Altering and discontinuing roads.*] It has already been mentioned in this chapter that the commissioners have power to alter roads already laid out, and to discontinue such old roads as shall appear to them on the oaths of twelve freeholders of the town to have become necessary to be discontinued. 1 *R. S.* 501; 4th ed., 1029. (*Form of application to alter a road, Appendix, No. 130.*)

When application is made for the discontinuance of an old road, on the ground that it is useless and unnecessary, the commissioners must summon twelve disinterested freeholders of the town, to meet on a day certain, to consider on such application.

The freeholders may be sworn by a commis-

sioner. (*Form of application to discontinue road, see Appendix, No. 172.*)

The freeholders proceed and view the road, and if they come to the conclusion that the road is unnecessary, they make and subscribe a certificate to that effect, and deliver the same to the commissioners. (*Form of freeholders' certificate to discontinue road, Appendix, No. 173.*)

The commissioners thereupon proceed to decide upon such application. (*Form of order of discontinuance, Appendix, No. 174.*)

All applications, certificates, and other papers relating to the *laying out, altering, or discontinuing* of any road, must be filed by the commissioners, as soon as they decide upon the same, in the office of the town clerk. 1 R. S. 518; 4th ed., 1047.

It frequently is convenient to apply to lay out a new road, and alter or discontinue an old road, under one proceeding. The forms already given, can be readily adapted to such cases. It is legal to proceed in that way. *Carris v. Commissioners of Waterloo*, 2 Hill, 443.

Right of appeal.] It is provided by the laws of 1847, chap. 455, sec. 8, as follows: "Any person who shall conceive himself aggrieved by any determination of the commissioners of highways, either in laying out, altering or discontinuing any road, or in refusing to lay out, alter or discontinue any road, may at any time within sixty days after such determination shall have been filed in the office of the town clerk, appeal to the county judge of the county in the same manner as appeals were heretofore allowed to be brought to three judges

under title first, article fourth, chapter sixteenth, part first of the Revised Statutes; and when any appeal shall be brought under this section, the said judge, or in case of his residence in the town, or of his interest in the lands through which the road shall be laid out, or in case he is of kin to any of the persons interested in said lands, or in case of his disability for any cause, then one of the justices of the sessions shall, after the expiration of the said sixty days, appoint in writing three disinterested freeholders who shall not have been named by the parties interested in the appeal, and who shall be residents of the county but not of the town wherein the road shall be located, as referees to hear and determine all the appeals that may have been brought within the said sixty days, and shall notify them of their appointment, and deliver to them all papers pertaining to the matters referred to them. Upon receiving notice of appointment, the said referees shall possess all the powers and discharge all the duties heretofore possessed and discharged by the three judges, and give the same notices heretofore required to be given under title first, article four, chapter six, part one aforesaid, and before proceeding to hear the appeal or appeals they shall be sworn by some officer authorized to take affidavits to be read in courts of record, faithfully to hear and determine the matters referred to them."

Such appeal must be in writing, addressed to the judges, and signed by the party appealing. It must state briefly the ground upon which it is

made, and whether it is brought to reverse entirely the determination of the commissioners, or only a part thereof; and in the latter case, what part. 1 *R. S.* 518; 4th ed., 1047.

The referees must proceed as soon as convenient, to hear the appeal. Notice should be given to the commissioners and the applicant, of the time and place of hearing. The notice should be at least eight days, and should be served as other notices are required to be served, mentioned in this chapter.

Upon the hearing, the referees have power to issue subpoenas, and to adjourn from time to time.

Their decision, or any two of them, is conclusive in the premises. It must be in writing, signed by the referees, or two of them, and filed in the town clerk's office and recorded. (*Form of appeal to county judge under foregoing provision, Appendix, No. 142, and the several notices, Appendix, Nos. 144, 145, &c.*)

The commissioners are entitled to notice of the appeal. *Johnson v. Supervisors of Herkimer*, 19 *John.* 272. It will not answer to serve it on the town clerk. 15 *John.* 537.

On such appeal, the referees must confine themselves to an affirmance or reversal of the order of the commissioners. They are not at liberty to go on and lay out a new road; in other words their jurisdiction is strictly appellate. 1 *Cow.* 23; 1 *Id.*, 142. 13 *Wend.*, 432. 2 *Caines*, 179.

The referees are not at liberty to reverse a part of the order of the commissioners and affirm a part. 23 *Wend.* 360. 25 *Wend.* 453. *For valuable forms*

relating to appeals and proceedings of this kind, see The People v. Commissioners of Salem, 1 Cow. 23.

The referees must be sworn before they enter upon the hearing, and as a necessary incident to their power, may administer oaths to the witnesses produced before them.

The referees, should they neglect to proceed after their appointment, may be put in motion by mandamus. *Lansing v. Caswell, 4 Paige, 522. (Form of referee's decision, Appendix, Nos. 147 and 148.)*

Every referee appointed under these proceedings, is entitled to receive two dollars for every day employed in the hearing and decision of such appeal or appeals, to be paid by the party appealing where the determination of the commissioners shall be confirmed, but where it is reversed, to be a charge upon the county; and when the referees make any decision, laying out, altering, or discontinuing any road in whole or in part, it is the duty of the commissioners of highways of the town, to carry out such decision in the same manner as required in cases of final determinations of appeals, and such decision shall remain unaltered for the term of four years from the time the same shall have been filed in the office of the town clerk.

Final determination to be carried into effect.] When there has been a final determination upon such appeal, making it necessary that any road shall be *laid out, altered, opened, or discontinued*, it is the duty of the commissioners, or the commissioner of the town where the same is to be done, to carry out such determination, the same as if there had been no appeal. *Laws of 1845, chap. 180, sec. 13.*

Fences to be removed.] When the commissioners have laid out a road, and their determination has not been appealed from, they must give the owner or occupant of the land sixty days notice in writing, to remove his fences. If not removed within sixty days, the commissioners may cause them to be removed, and open and work the road.

When roads cease.] Roads laid out but not opened and worked within six years, cease to be a public highway. 1 *R. S.* 522; 4th ed. 1049. 2 *Cow.* 426.

All public highways now in use, laid out and recorded, and roads not recorded, which have been used as public highways for twenty years or more, are deemed by law public highways, subject to alteration however, upon regular legal proceedings for that purpose. See on this point, 7 *John.* 106; 17 *do.* 277.

Certiorari.] Notwithstanding the statute of 1847 pronounces the decision of the referees final for four years, still upon good cause shown, the supreme court may review their proceedings by certiorari. 1 *Cow.* 23. 2 *Caines*, 179. 15 *John.* 537.

Canal commissioners and engineers.] Roads may be altered, discontinued, and laid out, by canal commissioners, under certain restrictions, for which see 1 *R. S.* 221; 4th ed. 474.

Private roads.] The constitution of 1846, provides "That private roads may be opened in the manner to be prescribed by law, but in every case, the necessity of the road, and the amount of all damage to be sustained by the opening thereof, shall first be determined by a jury of freeholders; and such amount together with the expenses of the pro-

ceeding, shall be paid by the person to be benefited." *Article 1, sec. 7.*

The provisions of the Revised Statutes relating to private roads, were pronounced unconstitutional in the case of *Taylor v. Porter*, 4 *Hill*, 140.

The first step in the laying out of a private road, is the application. The commissioners upon receiving the application, should forthwith serve a notice on the town clerk and the persons interested in the road, specifying a time when a jury of the town will be drawn at the office of the clerk, which must be not less than six, nor more than ten days from the time of service of such notice. At the appointed time, the clerk proceeds to draw from the jury list last filed, in the same manner as is provided for juries in case of a re-assessment, under the fourth section of chapter 455 of Laws of 1847; and the names so drawn must be certified to, and the jurors summoned, drawn and sworn, and all proceedings had, and the verdict made, certified to and filed, in the same manner as is provided in cases of re-assessment of damages before mentioned. *Laws of 1847, chap. 455, p. 585.*

The jury must determine the necessity of the road, and the amount of damage incident to the opening thereof, and such amount together with the expense of the proceedings, must be paid by the person to be benefited. *Laws of 1848, chap. 77, p. 85. 1 R. S. 1046, 4th ed.*

Should the jury render a verdict against the laying out of the road, that would be final. If in favor of the road, the commissioners then have the power to lay it out.

The road having been laid out, and the damages paid, its use belongs to the applicant, his heirs and assigns; but may not be converted to any other purpose but that of a road. 14 *John*. 383. 1 *R.S.* 517; 4th ed. 1047.

The same rules apply in respect to laying a private road through an orchard or garden, or fixture, that appertain to public highways. (*See Appendix, form for notice to town clerk, No. 165. Notice to persons interested, of the drawing of a jury, No. 166. Certificate of the drawing of the jury by clerk, No. 167. Verdict of the jury, No. 169. Certificate of the justice, No. 168. Order laying out private road, No. 171.*)

For any other forms relating to private roads, those used respecting public highways may be readily adapted to private roads.

The owner may consent to the laying out of a private road, and it seems that such consent will be valid, although not in writing. *Baker v. Braman*, 6 *Hill*, 47.

The owner may recover the damages assessed, by action. *Id.*

The commissioners should not open the road until after the damages to the owner have been actually paid. 6 *Paige*, 83.

Obstructions of highways.] The penalty for obstructing a highway, or any ditch for drawing water therefrom, is five dollars. This penalty relates only to public roads; if a private road is obstructed, the person for whose benefit the private road was laid out, must pursue his remedy against the offender, by action for the damages. *Fowler v. Lansing*, 9 *John*. 349.

Should the owner of land over which a public highway passes, dig a race across the road to conduct water to his mill, and bridge the race, and an injury be sustained by any one in consequence of the bridge being out of repair, such owner would be liable in damages to the party aggrieved. *Dy-gert v. Schenck*, 23 *Wend.* 446.

Such owner may dig a race across a public road, but he must restore the road to a travelling condition; and if any injury occurs, though he uses care to prevent it, he is liable in damages unless the party injured is chargeable with carelessness and negligence himself. *Id.*

A plea of title is no bar to an action by commissioners, for a penalty for an obstruction of a highway. *Parker v. Van Houten*, 7 *Wend.* 145.

The public are entitled to the use and enjoyment of the *whole* of a road, for passing and repassing, and no one is at liberty to appropriate a portion of it to his own *exclusive use*, and shield himself from responsibility to the public by saying that enough is still left for the accommodation of others. *Hart v. Mayor of Albany*, 9 *Wend.* 584.

Hence any obstruction of a public street, for an *unreasonable* length of time, although in the prosecution of a lawful business, as in the loading or unloading of wagons, or by stages waiting and soliciting for passengers, blasting rocks, making excavations, piling up building materials, and the like, are deemed obstructions, making the offender liable to the penalty, and also to indictment. 6 *East*, 427. 9 *Wend.* 584. *Hay v. The Cohoes Co.*, 3 *Barb.* 43. 6 *Hill*, 292.

Falling trees into road or river.] Where a tree is fallen from enclosed land into a highway, any person may give notice to the occupant of the land, to remove the same within two days; if after that time the tree is not removed, the occupant of the land forfeits fifty cents a day, for each day thereafter, until the tree is removed.

Falling trees into any river or stream used as a public highway, and suffering them to remain more than twenty-four hours thereafter, subjects the offender to a penalty of five dollars. 1 R. S. 523; 4th ed., 1051.

Encroachments.] In that class of roads which have been regularly laid out, if they are encroached upon by fences, the commissioners may order such fences to be removed, to the end that such road may be of the breadth originally intended. The order of the commissioners for that purpose, must be reduced to writing and signed. (*Form of order, Appendix, No. 176.*)

They must next give notice to the occupant of the land, to remove his fences within sixty days. (*Form of notice, Appendix, No. 177.*)

The notice must specify the breadth of the road originally, the extent of the encroachment, and the place in which the same may be. Care should be taken in drafting this notice. In one case, where the notice describing the encroachment as of "*the average width of one rod or upwards,*" was given, it was held insufficient. A notice directing the removal of a fence, "*so that the highway might be of the width originally intended,*" without stating what the breadth was, was also held de-

fective. *Mott v. Commissioners of Rush*, 2 Hill, 472.

The notice should point out the particular place where the encroachment is. *Spicer v. Slade*, 9 John. 359.

The commissioners should meet, deliberate, and decide on the encroachment, and give the sixty days' notice, before they can attempt to bring a person in default for not obeying the order. *Id.*

Penalty.] If the removal of the encroachment is not made within sixty days after service of the notice, the occupant forfeits fifty cents for every day thereafter, until removed.

The commissioners have power to remove the encroachment, and collect the expense of the occupant. *Laws of 1840, chap. 300.*

If the occupant denies the encroachment within five days after notice, the commissioners must apply to a justice of the peace, for a precept to summon twelve freeholders. (*Form of precept, Appendix, No. 178.*)

The precept should require the freeholders to meet at a time and place, not less than four days after the issuing thereof. The constable serving the precept, must give three days notice to the commissioners, and to the occupant of the land.

The jury appear, are sworn, and hear the witnesses produced. The jury and witnesses are sworn by a justice. (*Form of oath, Appendix, No. 179.*)

Verdict.] If the jury find an encroachment, they make and subscribe a certificate in writing, stating the particulars of the encroachment, and by whom

made; which must be filed with the town clerk.

The occupant must remove his fences within sixty days after the filing of the verdict, or forfeit the penalty of fifty cents a day. He must also pay the costs within ten days, or in default, the justice must issue his warrant for their collection. (*Form of verdict, Appendix, No. 181.*) 1 R. S. 522; 4th ed., 1051.

The verdict of the jury is intended as a guide to the person who is convicted of the encroachment, and hence should contain upon its face, so definite a description of the encroachment, that the party may be able to know where and how much to remove his fences. 22 Wend. 132.

If the jury find no encroachment, they must ascertain and certify the damages the occupant has sustained by the proceeding, which together with the costs, the commissioners must pay, and charge in their account against the town. Fences are not required to be removed under these proceedings, except between the first days of April and the November following in any year.

Bridges.] When the commissioners are dissatisfied with the determination of the board of supervisors of the county, respecting an allowance for bridges, they may apply to the court of sessions to review such determination. *Laws of 1847, chap. 455.*

The commissioners may put up and maintain at each end of any bridge in the town, which is maintained at the public charge, and the length of whose chord is not less than twenty-five feet, a notice, with the following words in large

characters: “*One dollar fine for riding or driving on this bridge faster than a walk.*”

Riding or driving on such bridge faster than a walk, subjects the party offending to a penalty of one dollar.

Whoever injures a bridge maintained at the public charge, forfeits treble the damages for each offence.

Where adjoining towns are liable to make and maintain bridges over streams dividing such towns, such bridges must be built and repaired at the equal expense of such towns, without reference to the town lines.

The commissioners of such adjoining towns, may enter into joint contracts respecting the building and repairing of such bridges; and such contracts may be enforced against such commissioners jointly, the same as if entered into by individuals. *Laws of 1841, chap. 225.*

For the mode of proceeding in case of neglect of duty on the part of the commissioners of either town, see *secs. 3 and 4, of the same laws.*

Trees, to whom they belong.] All trees standing or lying on any land over which any highway may be laid out, shall be for the proper use of the owner or occupant of such land, except such of them as may be requisite to make or repair the highways or bridges on the same land.

Penalty for injuring trees planted on highway.] Any person owning land adjoining any highway not less than three rods wide, may plant or set out trees on the side of such highway contiguous to his land; which trees shall be set in regular rows, at

a distance of at least six feet from each other. Whoever shall cut down, destroy or injure any tree that has been or shall be so planted or set out, shall be liable in damages to the owner of such adjoining land.

Penalty for injuring mile boards.] Whoever shall destroy, remove, injure or deface any mile-board or mile-stone, erected on any highway, shall forfeit for every offence the sum of ten dollars; he shall also be deemed guilty of a misdemeanor, and on conviction shall be fined not exceeding fifty dollars, or imprisoned not exceeding three months, at the discretion of the court.

Penalty for injuring guide posts.] Whoever shall injure or deface any description affixed to a guide-post erected on any highway, or destroy or injure any such guide-post, shall be liable to all the penalties provided in the last preceding section.

Injuries to road.] Whoever shall injure any highway, by obstructing or diverting any creek, water-course or sluice, or by drawing logs or timber on the surface of any road or bridge, or by any other act shall, for every such offence, forfeit treble damages.

The penalties given by title 4, of chapter 15 of part 1 of the Revised Statutes, when not otherwise specially provided for, are to be recovered by the commissioners of highways of the town in which the offence is committed; the proceeds of which must be applied in improving the roads and bridges in such town. 1 R. S. 526; 4th ed., 1055.

Such suits should be in the individual names of the commissioners, with the addition of their official title. 5 Hill, 215.

Fees.] Commissioners of highways are entitled to one dollar a day for their services, while actually and necessarily engaged in the service of the town. 1 R. S. 356; 4th ed., 664.

Side walks.] Side walks may be constructed within the bounds of a highway, by persons owning or occupying the adjoining land, and railings erected to protect such walks. Persons guilty of riding or driving a horse or team upon such walk, forfeit for each offence one dollar to the use of the owner or occupant. 1 R. S. 524; 4th ed., 1052.

SECTION 3. OVERSEERS OF HIGHWAYS, HOW CHOSEN, AND THEIR POWERS AND DUTIES.

How chosen.] At the annual town meeting in each town, there must be chosen as many overseers of highways as there are road districts in the town, except in the counties of Suffolk, Queens, Kings, and Richmond: in those counties there may be as many chosen as the electors may determine.

They may be chosen either by ballot, by ayes and noes, or by the rising or dividing of the electors. Like other town officers they must be electors of their respective towns.

In case of vacancy, the commissioners of highways may appoint. (*Form of appointment of overseer of highways, Appendix, No. 110.*) The appointment should be filed forthwith in the town clerk's office.

Only one penalty to be collected.] If such overseer when duly elected or appointed, refuses to serve, he forfeits to the town the sum of ten dollars, which may be collected and appropriated like

other forfeitures in this chapter. 1 *R. S.* 347; 4th ed., 656. After a person has incurred such a penalty for refusing to serve, it would not be proper for the commissioners to appoint him the same year, and should they make such appointment, a second refusal to serve would not subject the party to a second penalty. *Haywood v. Wheeler*, 11 *John.* 432.

Acceptance.] Within ten days after notice of his election, or appointment, and before he enters upon the duties of his office, such overseer is required to cause to be filed in the town clerk's office of his town, a notice in writing signifying his acceptance of the office. An omission to file the acceptance, is deemed a refusal to serve. 1 *R. S.* 345; 4th ed., 655.

General duties.] Such overseers are required to repair and keep in order the several highways in the district, to warn all persons assessed to work on the roads to come and work thereon, to cause noxious weeds within the bounds of the highway to be destroyed twice in the year, once before the first of July, and once before the first of September, (the requisite labor being considered highway work,) to collect all fines and commutation money, and to execute all lawful orders of the commissioners.

It is made their further duty, once in every month, from the first day of April to the first of December, to cause all the loose stones lying on the beaten track of every road in their district, to be removed, and to cause the monuments erected or to be erected as the boundaries of highways, to

be kept up and renewed, so that the extent of such roads may be publicly known.

When the labor assessed is deemed insufficient by them to keep the road in their district in repair, they may make another assessment on the actual residents in the district, in the same proportion as near as may be, not exceeding one-third of the days already assessed ; the labor thus assessed must be performed in the same manner as if it had been assessed by the commissioners. 1 R. S. 503; 4th ed., 1031.

Overseer to remove obstructions.] It is the duty of the overseer to remove obstructions from the highways without being specially directed by the commissioners, and for a refusal or neglect, he forfeits the penalty of ten dollars. 11 Wend. 667.

Where an individual or a corporation, have a fixed and certain duty assigned to them, of a merely ministerial character, and the means placed at their disposal sufficient for its performance, they are under obligation to perform it, at the risk of being made to answer for the consequences of their neglect. *Hutson v. City of New-York*, 5 Sandford, 289.

The duty of the overseer in regard to the performance of highway labor, is regulated so minutely by the statute, that a substantial transcript therefrom, is deemed nearly all that will be necessary in that respect.

Notice to work, and where to be done.] It is the duty of the overseers of highways, to give at least twenty-four hours' notice to all persons assessed to work on the highways, and residing within the

limits of their respective districts, of the time and place when and where they are to appear for that purpose, and with what implements ; but no person, being a resident of the town, shall be required to work on any highway, other than in the district in which he resides, unless he elects to work in some district where he has any land ; and in such case he may, with the approbation of the commissioners of highways, apply the work assessed in respect to such land, in the district where the same is situated.

Notice to non-residents.] It is the duty of the several overseers of highways, to notify the agent of every non-resident landholder, whose lands are assessed (if such agent reside in the town where such assessment is made), of the number of days such non-resident is assessed, and of the time when and the place where the labor is to be performed ; which notice must be given at least five days previous to the time appointed.

If the overseer cannot ascertain that such non-resident has an agent within such town, he must affix a written notice on the outer door of the building in which the last town meeting in such town was held, containing a list of the names of such non-residents, when known, and a description of the tracts of land comprised in his list, together with the number of day's labor assessed on each tract, and a specification of the time when and place where such labor is to be performed ; which notice must be posted at least twenty days before the time appointed for performing such labor.

Commutation for work.] Every person liable to work on the highways, must work the whole number of days for which he shall have been assessed ; but every such person, other than an overseer, may elect to commute for the same, or for some part thereof, at the rate of sixty-two and a half cents for each day ; in which case such commutation money must be paid to the overseer of highways of the district in which the person commuting resides, to be applied and expended by such overseer in the improvement of the roads and bridges in the same district.

When to be paid.] Every person intending to commute for his assessment, or for any part thereof, must within twenty-four hours after he shall be notified to appear and work on the highways, pay the commutation money for the work required of him by such notice ; and the commutation is not to be considered as complete, until such money be paid.

Teams, &c.] Every overseer of highways has power to require a team ; or a cart, wagon or plow, with a pair of horses or oxen, and a man to manage them ; from any person having the same within his district, who is assessed three days or more, and who has not commuted for his assessment ; and the person furnishing the same upon such requisition, is entitled to a credit of three days for each day's service therewith.

Substitute's hours to work.] Every person assessed to work on the highways, and warned to work, may appear in person, or by an able bodied man as a substitute ; and the person or substitute so

appearing, must actually work eight hours in each day, under the penalty of twelve and a half cents for every hour such person or substitute is in default, to be imposed as a fine on the person assessed.

Penalty for neglect, &c.] If any such person or his substitute shall, after appearing, remain idle, or not work faithfully, or hinder others from working, such offender, for every offence, forfeits the sum of one dollar.

Penalties for not working, &c.] Every person so assessed and duly notified, who does not commute, and who refuses or neglects to appear as above provided, forfeits, for every day's refusal or neglect, the sum of one dollar. If he was required to furnish a team, carriage, man or implements, and refuses or neglects to comply, he shall be fined as follows:

1. For wholly omitting to comply with such requisition, three dollars for each day:

2. For omitting to furnish a cart, wagon or plough, one dollar for each day:

3. For omitting to furnish a pair of horses or oxen, one dollar for each day:

4. For omitting to furnish a man to manage a team, one dollar for each day.

Complaints how made.] It is the duty of every overseer of highways, within six days after any person so assessed and notified, shall be guilty of any refusal or neglect for which a penalty or fine is above prescribed, unless a satisfactory excuse is rendered to him for such refusal or neg-

lect, to make complaint on oath, to one of the justices of the peace of the town.

Proceedings.] The justice to whom such complaint is made, must forthwith issue a summons, directed to any constable of the town, requiring him to summon such delinquent to appear forthwith before such justice, at some place to be specified in the summons, to shew cause why he should not be fined according to law for such refusal or neglect ; which summons must be served personally, or by leaving a copy at his personal abode.

If, upon the return of such summons, no sufficient cause be shown to the contrary, the justice must impose such fine as is provided in this chapter for the offence complained of, and shall forthwith issue a warrant under his hand and seal, directed to any constable of the town where such delinquent may reside, commanding him to levy such fine, with the costs of the proceedings, of the goods and chattels of such delinquent.

The constable to whom such warrant is directed, must forthwith collect the moneys therein mentioned. He must pay the fine when collected, to the justice who issued the warrant, who is required to pay the same to the overseer who entered the complaint, to be by him expended in improving the roads and bridges in the district of which he is overseer.

Penalties to be set off.] Every penalty collected for a refusal or neglect to appear and work on the highways, must be set off against the assessment

upon which it was founded, estimating every dollar collected as a satisfaction for one day's work.

Excuses.] The acceptance by an overseer of any excuse for refusal or neglect, does not, in any case, exempt the person excused from commuting for, or working, the whole number of days for which he may have been assessed during the year.

Proceedings to collect non-resident labor unpaid.] Every overseer of highways is required, on or before the first day of October, in each year, to make out and deliver to the supervisor of his town, a list of all the lands of non-residents, and of persons unknown, which were taxed on his lists, on which the labor assessed by the commissioners of highways has not been paid, and the amount of labor unpaid; and previous to delivering such list, must make and subscribe an affidavit thereon, before some justice of the peace of such town, that he has given the notice above mentioned, and that the labor for which such land is returned has not been performed.

Proceedings, &c.] If any overseer refuse or neglect to deliver such list to the supervisor, or refuse or neglect to make the affidavit as therein directed, he, for every such offence, forfeits the sum of five dollars, and also the amount of tax or taxes for labor remaining unpaid, at the rate of sixty-two and a half cents for each day; to be recovered by the commissioners of highways of the town, and to be applied by them in making and improving the roads and bridges in such town.

(*For the duty of the supervisor and the boards of supervisors respecting such list, see chaps. 1 and 2, ante.*)

Annual return of overseers.] Every overseer of highways shall, on the second Tuesday next preceding the time of holding the annual town meeting in his town, within the year for which he is elected or appointed, render to one of the commissioners of highways of the town, an account in writing, verified by his oath, (which the commissioners of highways are authorised to administer,) and containing,

1. The names of all persons assessed to work on the highways in the district of which he is overseer:

2. The names of all those who have actually worked on the highways, with the number of days they have so worked:

3. The names of all those who have been fined, and the sums in which they have been fined:

4. The names of all those who have commuted, and the manner in which the monies arising from fines and commutations have been expended by him:

5. A list of all lands which he has returned to the supervisor for non-payment of taxes, and the amount of tax on each tract of land so returned.

To pay over moneys.] Every such overseer must also then and there pay to the commissioner, all monies remaining in his hands unexpended, to be applied by the commissioners in making and improving the roads and bridges in the town, in such manner as they may direct.

Penalty, how collected.] If any overseer shall refuse or neglect to render such account, or if having rendered the same, he shall refuse or neglect to

pay any balance which may then be due from him, he, for every such offence, forfeits the sum of five dollars, to be recovered with the balance of moneys remaining in his hands, by the commissioners of highways of the town, and to be applied in making and improving the roads and bridges. It is the duty of the commissioners of highways to prosecute for such penalty in every instance in which no return is made.

Reassessment in case of neglect.] Whenever it appears from the annual return of any overseer of highways, made as above directed, that any person who was assessed to work on the highways, (other than non-residents,) has neglected to work the whole number of days to him assessed, and has not commuted for or otherwise satisfied such deficiency, then it is the duty of the commissioners of highways to reassess such deficiency to the person so delinquent, at the next assessment of work for highway purposes, and to add to it his annual assessment.

Such reassessment does not exonerate any overseer of highways from any penalty which he may have incurred.

The names of persons left out of the highway lists as prepared by the commissioners, together with the names of new inhabitants, must be added by the overseers, and rated in proportion to their property as the commissioners have rated others, subject to an appeal to the commissioners. 1 R. S. 507; 4th ed., 1035.

For the several forms to be used by the overseer of highways, see Appendix, as follows :

Overseer's list of persons in his district, No. 111.

Additional assessment, No. 114.

Notice as to non-resident lands, No. 117.

Complaint against a person refusing to work, No. 118.

For not furnishing a team, No. 119.

List of non-resident lands, &c., to be delivered to supervisor, No. 121.

Affidavit to attach, No. 122.

Annual account of overseers, No. 123.

CHAPTER IX.

OF THE TOWN SUPERINTENDENT.

The statute designation of this officer is "town superintendent of common schools." He is elected at an annual town meeting, like other town officers.

He holds his office for two years, and until a successor has been duly elected, taken the oath of office, and filed his official bond. While acting in this capacity, he is ineligible to the office of supervisor or town clerk.

Bond.] Before the first Monday of November succeeding his election, he must execute a bond, with one or more sufficient sureties, to the supervisor of his town, to be approved by the supervisor, with a penalty in double the amount of all school moneys received by his town from all sources during the preceding year, and conditioned for the faithful disbursement of all the school moneys coming into his hands during his term of

office, and for the faithful discharge of all the duties of his office. (*Form of bond, Appendix, No. 26.*) The omission to have such bond with the written approval of the supervisor thereon endorsed, *actually filed with the town clerk before the first Monday of November*, renders the office vacant.

Vacancy.] A vacancy from that cause or any other, in this office, may be filled by an appointment made by three justices of the peace of the same town. (*Form of appointment, Appendix, No. 25.*)

Duties generally.] It is his duty,

1. To divide the town into a convenient number of school districts, and to regulate and alter such districts as hereinafter mentioned:

2. To set off by itself any neighborhood in the town adjoining to any other state of this Union, where it has been usual or shall be found convenient for such neighborhood to send their children to a school in such adjoining state:

3. To describe and number the school districts, and to deliver the description and numbers thereof, in writing, to the town clerk, immediately after the formation or alteration thereof.

The description should be as accurate as is required in deeds of real estate. It should describe the territory by metes and bounds, so that any surveyor could run the lines. Where the boundaries of a district are in doubt, the superintendent should make an order reciting the fact and declaring that such district "is described," and if the description involve any alteration, "is hereby altered so that the boundaries thereof shall be as follows, viz." He should procure and file with this order the written

assent of the trustees of all the districts adjoining the disputed or doubtful lines. If this assent is refused he should give written notice that such order so far as it may involve any alteration of their district will take effect at the expiration of three months. Before making any alteration of a district, the superintendent should give the trustees a written notice of his intention to do so by a given day unless they associate the town clerk and supervisor with him.

4. To deliver to such town clerk a description of each neighborhood, adjoining to any other State, set off by itself:

5. To apply for and receive from the county treasurer all moneys apportioned for the use of common schools in his town, and from the collector of the town, all moneys raised therein for the same purpose, as soon as such moneys shall become payable, or be collected:

6. To apportion the school moneys received on the first Tuesday of April, in each year, among the several school districts, parts of districts and neighborhoods separately set off, within the town; in proportion to the number of children residing in each, over the age of four and under that of twenty-one years, as the same shall have appeared from the last annual reports of their respective trustees.

The superintendent may call upon trustees to correct a report in regard to children whom he deems improperly included, but he cannot decline to make an apportionment if they refuse to modify it, nor can he base the apportionment upon what he may deem the true state of facts. The report

controls. If the trustees have wilfully signed a false report, they are liable to a penalty of \$25.

The duty of the town superintendent in the apportionment of school moneys is restricted to that portion thereof which has not already been apportioned by the state superintendent. The latter is required to divide one third of those moneys equally among all the districts of the state, irrespective of their population, except in regard to the few "separate neighborhoods" which are attached to districts in adjoining states. The share of these "separate neighborhoods" *in this one-third* is thirty-three cents for each child between four and twenty-one years of age. The share of each whole district is this year \$29.77 $\frac{3}{10}$. The state superintendent assigns to each town so many times this sum as there are whole districts therein, and parts of joint districts, the school houses of which are in such town. For instance the town of Lima in Livingston county, has six districts wholly in said town. It has also part of joint district No. 2, on which is the school house, the other parts of such district lying in the town of Bloomfield and Mendon, and three other parts of districts also containing the school house, in all, four. The state superintendent therefore assigns to the town of Lima \$297.73, which is paid over to the superintendent of Lima, not to be apportioned, but simply to be held and paid to the amount of \$29.77 on the orders of the trustees of each of such districts. A district lying partly in Lima and partly in Avon, but having its school house in Avon, will find its \$29.77 in the hands of the superintendent of the latter town. If

either of the districts reported on the preceding first day of July as having its school house in Lima has been annulled, it is the duty of the superintendent to return the \$29.77 apportioned for it, to the department of public instruction. If on the other hand by an error of the town superintendent or of the county clerk, a less number of districts have been reported than actually existed and had their school houses in the town on the preceding 1st of July, the superintendent should make a statement of the facts to the department of public instruction to the end that such district may be credited with \$29.77, to be paid with the apportionment of the succeeding year. The amount of the district quota of course varies with the number of districts in the state from year to year, and may be less than \$29.77 in 1856, but it is the same in each district and has no relation to the population or number of pupils therein.

" The remainder of the school moneys is assigned by the state superintendent to the several towns, in proportion to their entire population as ascertained by the last preceding state or federal census. \$55,000 of this money is appropriated by law to the increase of the district libraries, and is therefore apportioned separately but upon the same basis of population, and is designated library money. The town superintendent is required to re-apportion the money destined for teachers' wages among the several districts, parts of districts and "separate neighborhoods" in his town, in the ratio of the number of children in each between the ages of four and twenty-one. The town receives an amount

augmented by the population of the separate neighborhoods, and the latter have the same right to an apportionment as any other "parts of districts," with the exception of the library money. This is apportioned separately among the districts and parts of districts, excluding the separate neighborhoods.

7. If he shall have received the school moneys of the town, and all the reports from the several school districts therein, before the first Tuesday of April, he must apportion such moneys as above directed, within ten days after receiving all of the said reports and moneys:

8. To sue for and collect, by his name of office, all penalties and forfeitures imposed by the school laws, and in respect to which no other provision is made, which shall be incurred by any officer or inhabitant of his town, and after deducting his costs and expenses, to add the sums recovered to the school moneys received by him, to be apportioned and paid in the same manner.

When to withhold moneys.] In making the apportionment of moneys among the several school districts, no share can be allotted to any district, part of a district, or separate neighborhood, from which no sufficient annual report has been received, for the year ending on the last day of December, immediately preceding the apportionment.

Teachers' and library money to be designated.] In making the apportionment of public money, the town superintendent must designate the respective proportions of teachers' and library money belonging to each district, and pay over as much as is designated teachers' money, on the written

order of a majority of the trustees of each district, to the teachers entitled to receive the same, that is to teachers possessing a regular certificate, and for services rendered since the first of January preceding.

No moneys can be apportioned and paid to any district or part of a district, unless it appears by such report that a school had been kept therein for at least six months during the year ending at the date of such report, by a qualified teacher; that no other than a duly qualified teacher has at any time during the year for more than one month been employed to teach the school in said district; and that all moneys received during that year have been applied to the payment of the compensation of such teacher; and no portion of the library money can be apportioned or paid to any district or part of a district, unless it appears from the last annual report of the trustees that the library money received at the last preceding apportionment was duly expended according to law, on or before the first day of October subsequent to such apportionment.

Who deemed a qualified teacher.] Every teacher shall be deemed a qualified teacher, who shall hold a certificate dated within one year, from the town superintendent for the town in which such teacher shall be employed, or who shall have in possession a state or county certificate of qualification, or a diploma from the State Normal School. Town superintendents during their continuance in office, are deemed qualified to teach. 1 R. S. 886, 4th ed.

No part of such moneys must be apportioned or paid to any separate neighborhood adjoining another State, unless it appears from the report of its trustees that all moneys received by them during the year ending at the date of such report have been faithfully applied, in paying for the instruction of children residing in such neighborhood.

Apportionments to be ordered in certain cases of omission.] Whenever an apportionment of the public money is not made to any school district, in consequence of any accidental omission to make any report required by law, or to comply with any other provision of law, or any regulation, the state superintendent may direct an apportionment to be made to such district, according to the equitable circumstances of the case, to be paid out of the public money on hand ; or if the same shall have been distributed, out of the public money to be received in a succeeding year.

Applications to the superintendent for the exercise of this power, must be founded upon affidavits detailing the facts which excuse the delinquency, with precision in respect to dates, numbers, etc.

Extent of above provision.] The above provision extends to all cases where a school district has been formed at such time previous to the first day of January, as not to allow a reasonable time to have a six months school kept therein.

Moneys remaining in the hands of superintendents, how disposed of.] All moneys apportioned by the town superintendent, to the trustees of a district, part

of a district, or separate neighborhood, which have remained in his hands for one year after such apportionment, by reason of the trustees neglecting or refusing to receive the same, must be added to the moneys next thereafter to be apportioned by him, and apportioned and paid therewith in the same manner.

Money on hand for two years to be returned.] In case any school moneys received by the superintendent cannot be apportioned by him, for the term of two years, after the same are received, by reason of the non-compliance of all the school districts in his town with the provisions of this title, such moneys must be returned by him to the county treasurer, to be by him apportioned and distributed, together and in the same manner with the moneys next thereafter to be received by him for the use of common schools.

Report to be made yearly to county clerk.] It is the duty of the town superintendent in each town, between the first day of July and the first day of August in each year, to make and transmit to the county clerk a report in writing, bearing date on the first day of July, in the year of its transmission, and stating,

Number of districts.] 1. The whole number of school districts and neighborhoods separately set off within the town:

Districts, parts and neighborhoods.] 2. The districts, parts of districts and neighborhoods from which reports shall have been made to him, or his immediate predecessor in office, within the time limited for that purpose:

Time a school has been kept.] 3. The length of time a school shall have been kept in each of such districts or parts of districts, distinguishing what portion of that time the school shall have been kept by qualified teachers:

Moneys received.] 4. The amount of public moneys received in each of such districts, parts of districts and neighborhoods:

Children taught.] 5. The number of children taught in each, and the number of children over the age of four and under twenty-one years, residing in each:

Whole amount of moneys received.] 6. The whole amount of moneys received by him, or his predecessor in office, during the year ending at the date of such report, and since the date of the last preceding report; distinguishing the amount received from the county treasurer, from the town collector, and from any other and what source:

How expended.] 7. The manner in which such moneys have been expended, and whether any, and what part remains unexpended, and for what cause:

Amount paid for teachers' wages, taxes levied, &c.] 8. The amount of money paid for teachers' wages, in addition to the public money paid therefor, the amount of taxes levied for purchasing school-house sites, for building, hiring, purchasing, repairing and insuring school-houses, for fuel and supplying deficiencies in rate bills, for district libraries, or for any other purposes allowed by law, in the districts, parts of districts and neighborhoods, from which reports shall have been received

by him or his immediate predecessor in office, with such other information as the state superintendent may from time to time require, in relation to the districts and schools within his town.

Penalty and consequence of neglect.] A neglect to furnish the above information, renders the superintendent liable to a penalty of ten dollars, to be sued for by the supervisor, for the use of schools. Besides, the superintendent of public instruction may in his discretion, withhold the share of school moneys apportioned to such town for the ensuing year, and distribute the same among other towns in the same county, from which the necessary reports may have been received.

When such share of the moneys is lost to the town by reason of such neglect, the town superintendent offending, and his sureties, are liable for the full amount so lost, with interest.

To keep account.] The town superintendent in each town, must keep a just and true account of all school moneys received and expended by him during each year for which he shall have been chosen, and lay the same before the board of auditors of town accounts at the annual meeting of such board, in each year.

Give same to successors.] He must, within fifteen days after the termination of his office, render to his successor in office, a just and true account, in writing, of all school moneys by him received, before the time of rendering such account, and of the manner in which the same has been appropriated and expended by him; and the account so rendered must be delivered by such successor

in office to the town clerk, to be filed and recorded in his office.

Must pay balance.] On rendering such account, if any balance is found remaining in his hands, the same must immediately be paid by him to his successor in office.

If appropriated, to be paid accordingly.] If such balance, or any part thereof, has been appropriated by him to any particular school district, part of a district or separate neighborhood, and shall remain in his hands for the use thereof, a statement of such appropriation must be made in the account so to be rendered, and the balance paid to such successor in office, must be paid over by him, according to such appropriation.

In order to comply with these requirements of the statute, the superintendent should keep a regular book account with each district under his charge, which he should hand over to his successor in office, to be continued by the latter. The account with each district should be continuous and not interrupted with every change in the officer.

Successors to prosecute.] Such successor in office may bring a suit in his name of office for the recovery, with interest, of any unpaid balance of school moneys, that appears to have been in the hands of any previous town superintendent on leaving his office, either by the accounts rendered by such town superintendent, or by other sufficient proof, and in case of the death of such town superintendent, such suit may be brought against his representatives.

Corporation.] The town superintendent in each town, has the powers and privileges of a corporation, so far as to enable him to take and hold any property transferred to him for the use of common schools in such town.

His pay.] He is entitled to receive one dollar and twenty-five cents per day, for every day actually and necessarily devoted by him in his official capacity to the service of his town; to be paid as other town officers are paid.

Oaths relating to schools.] He is authorized to administer oaths in all cases relating to school district affairs, and controversies, except in judicial proceedings; but not to charge any fees for the same.

Vacancy and term of office.] When appointed by the justices of the peace, he holds his office until the first Monday of November, following the next annual town meeting; and when the office becomes vacant for any cause, or before the time of the annual town meeting is held by a person so appointed, the electors at such town meeting, must chose a town superintendent to fill such vacancy, or to supercede such appointee, and the person so elected enters upon the duties of the office on the first Monday of November, following his election, and holds for two years.

Laws of 1849, chap. 382, p. 537. 1 R. S. 889, 4th ed.

Removal.] He may be removed from office by the superintendent of public instruction, for embezzling the public money, or any wilful violation of law, or for refusing to obey the orders and deci-

sions of the state department of public instruction.

Inspection and supervision.] He is the inspector of common schools of his town.

Duty as to teachers.] It is his duty to examine all persons offering themselves as candidates for teaching common schools in such town. In making such examination, it is his duty to ascertain the qualifications of the candidate, in respect to moral character, learning and ability. If he is satisfied in respect to the qualifications of the candidate, he delivers to the person so examined, a certificate signed by him, in such form as shall be prescribed by the superintendent of public instruction. (*Form of certificate, Appendix, No. 188.*) He may annul any certificate given by him or his predecessors in office, when he thinks proper, giving at least ten days' previous notice in writing to the teacher holding it, and to the trustees of the district in which he may be employed, of his intention to annul the same. When defects in moral character are the ground for annulling a certificate, the superintendent should furnish the teacher with a copy of the charges against him, and a specification of the facts relied on to support them. The teacher is to have the opportunity of cross-examining the witnesses, and of presenting testimony in support of his defence. Whenever he deems it necessary, he may require a re-examination of all or any of the teachers in his town, for the purpose of ascertaining their qualifications to continue as such teachers. The annulling of a certificate does not disqualify the teacher to whom

it was given, until a note in writing thereof, containing the name of the teacher, and the time when the certificate was annulled, is made by the town superintendent, and filed in the office of the town clerk. (*Form annulling certificate, Appendix, No. 189.*) When a district is composed of parts of two or more towns, the town superintendent of the town in which the school house of such district may be situated, must examine into and certify the qualifications of any teacher offering to teach in such district, in the same manner as is above provided, and may also in the same manner annul the certificate of such teacher; and no school-house may be erected so as to stand on the division lines of any two or more towns.

To visit schools.] He must visit all such common schools, within his town, as shall be organized according to law, at least twice a year, and oftener if he shall deem it necessary.

Must examine, &c.] At such visitation, he must examine into the state and condition of such schools, both as respects the progress of the scholars in learning, and the good order of the schools; and may give his advice and direction to the trustees and teachers of such schools as to the government thereof, and the course of studies to be pursued therein.

Formation and alteration of districts.] In the erection or alteration of a school district, the trustees of any district to be affected thereby, may apply to the supervisor and town clerk to be associated with the town superintendent; and their action

will be final unless duly appealed from ; the compensation of the supervisor and town clerk when thus associated, is the same as that of the town superintendent. (*Form altering a district, Appendix, No. 190.*)

Who may form and regulate joint districts.] Whenever it may become necessary or convenient to form a district out of two or more adjoining towns, the town superintendent of each of such adjoining towns, or the major part of them, may form, regulate and alter such district.

When alterations to take effect.] No alteration of any school district, made without the consent of the trustees thereof, can take effect until three months after notice, in writing, is given by the town superintendent, to some one or more of such trustees ; nor can any alteration or regulation of an organized school district be made to take effect between the first day of December in any one year, and the first day of May following.

Joint meeting of town superintendents.] If the town superintendent in any town, shall require by notice in writing, the attendance of the town superintendents of any other town or towns at a joint meeting for the purpose of altering a school district formed from their respective towns, and a major part of the town superintendents notified, refuse or neglect to attend, the town superintendents attending, by a majority of votes, may call a special district meeting of such district, for the purpose of deciding on such proposed alteration ; and the decision of such meeting will be as valid as if made by the town superintendents of all the towns interested,

but will extend no further than to dissolve the district formed from such towns.

Moneys belonging to districts that are annulled.] When there are moneys in the hands of the officers, of a district that is or may be annulled, or belonging to such district, the town superintendent of the town may demand, sue for and recover the same, in his name of office, and is required to apportion the same equitably between the districts to which the several portions of such annulled district may have been annexed, to be held and enjoyed as district property.

Where an alteration of school districts, made by the proper officers, affected three districts, and the trustees of two of the districts consented to the alteration, but the trustees of the other district did not consent, it was held that the alteration took effect immediately as to those districts whose trustees consented. *Williams v. Larkin*, 3 *Denio*, 114.

Consolidated districts.] Where two or more districts are consolidated into one, the new district succeeds to all the rights of property possessed by the districts of which it shall be composed, and when a district is annulled and portions annexed to other districts, the property of the district so annulled must be sold by the town superintendent of the town in which the school house is located, at public auction, to the highest bidder, after at least five days notice posted in three or more public places in said town, one of which must be within the district so annulled, and the proceeds of such sale must be first applied so far as requisite, to the payment of any just debts due from the

district so annulled, and the residue must be apportioned among the taxable inhabitants of the district so annulled, in the ratio of their several assessments upon the last assessment roll of the town. *Laws of 1849, chap. 382. 1 R. S. 892, 4th ed.*

Formation of a district.] Upon the formation of a district, it becomes the duty of the town superintendent within twenty days to prepare a notice in writing, describing the district, and appointing a time and place for the first district meeting, and to deliver such notice to a taxable inhabitant of the district, to be served on each and all of the other inhabitants who are qualified to vote. If for any cause the notice is not served properly, it may be renewed by the town superintendent. Should there be any irregularity in the service of this notice, still, if the district should in good faith proceed and elect their officers, the officers would be protected in the discharge of their duty, notwithstanding such irregularity or any other *mere irregularity* in the formation of a district. 5 *Wend.* 170; *Also 5 id.* 231. 9 *Wend.* 35; 7 *id.* 341.

They may give their consent to the levying of a tax upon school districts. They may also order any inhabitant of a district, qualified to vote at a district meeting, to notify the inhabitants of a special meeting. They have authority also to order special school meetings.

However urgent the necessity for a systematic compilation of the law affecting common schools, it will be readily seen that it could not be embraced within the design of this work. Such an undertaking would embrace a volume in itself.

The town superintendent will find his duties so interwoven with those of the trustees of school districts, that it will become necessary for him to familiarize himself with the law relating to their duties as well as his own. (*For other forms see Appendix, Nos. 191, 192 and 193.*)

CHAPTER X.

OF INSPECTORS OF ELECTION.

SECTION 1. Of their election and their powers and duties in conducting elections.

2. Their duty in respect to canvassing votes and certifying the same.

SECTION 1.

The inspector of elections is called upon to discharge the duties of one of the most responsible offices in the town. Upon the firmness, fidelity, and intelligence with which those duties are performed, depends much of the good order of society and the enactment and execution of wholesome and salutary laws. Whenever the ballot box ceases to be a fair exponent of the popular will, the people have just cause for alarm.

The inspector is placed as a sentinel at the extreme outpost of popular sovereignty, to see that each elector, however humble, unawed by fear or restraint of any kind, is not deprived the right of a fair expression of his opinions, through the agency of his vote, upon the political questions which may agitate the country.

The duties of this office were formerly discharged by the supervisor and assessors. In 1842, provi-

sion was made to have this a distinct office. By that act, as cited at page 342, 1 *R. S.*, 4th ed., sec. 21, it was provided as follows:

“At each town meeting to be held in the several towns of this State, and at each annual charter election to be held in the several cities of this State, which are not organized into towns, after the first day of January next, the electors of such city or town shall be entitled to vote by ballot, on the same ticket with other town or charter officers, for two electors residing in each election district of such town or city, to be inspectors of election for such city or town; and the two persons in each district receiving the greatest number of votes, shall be two of the inspectors of election for such district at all elections to be held therein the ensuing year. The presiding officers of such town meeting or charter election, shall immediately after the votes of such town meeting or charter election shall be canvassed, appoint by writing, subscribed by a majority of said presiding officers, another inspector of elections for each election district, to be associated with said two inspectors so elected, and who shall thereupon be one of the inspectors of election of such district. Such inspector shall be selected from the two persons in such election district who shall have the highest number of votes next to the two inspectors so elected. And no ballot for inspectors shall be counted upon which more than two names is contained.”

The object of the foregoing section is to secure to the political party in the minority, one inspector in each election district. The beneficial effect

of this statute has already been seen in allaying the jealousies engendered at the polls during heated political contests.

Should there be a vacancy in the office of inspector of elections for any cause, or in case he is unable to attend the election, the vacancy may be filled by appointment, to be made by the supervisor, justices of the peace, and town clerk of the town, or a majority of them.

For the mode of dividing towns and wards into election districts, vide 1 R. S. 341, 4th ed.

New towns.] When new towns are formed, the supervisor, town clerk, and assessors, meet at the town clerk's office, on or before the first Tuesday in September, preceding the first general election, and proceed to form the election districts. They proceed in the same way that was adopted in dividing the towns into election districts under the act of 1842. *Vide 1 R. S. 342, 4th ed.* Those officers in such case appoint the inspectors of election from among the justices of the peace, town superintendent, and commissioners of highways, in the order here named, as many as will be necessary to constitute at least three inspectors for each election district.

Board to be formed.] The inspectors of each election district must meet at the time and place, when and where an election may have been appointed to be held therein, and proceed to organize themselves as a board, for the purpose of presiding at and conducting such election.

Chairman.] The inspectors appoint one of their number chairman of the board, who must admin-

ister to the other inspectors the oath of office, as prescribed by the constitution, and the same oath must then be administered to the chairman by one of the other inspectors. (*Form of Oath, Appendix, No. 1.*)

Clerks.] The inspectors or a majority of them, having severally taken such oath, the board then appoints two clerks, to be called clerks of the poll.

Oath.] The clerks each take the constitutional oath of office, which must be administered to them by the chairman of the board.

Poll opened.] The poll of each election must then be opened, and proclamation to that effect made, and of the time when the same will be closed.

How long to be kept open.] The poll in the several cities must be opened at sunrise, and in the several towns at any time between sunrise and nine o'clock in the morning, and be kept open till the setting of the sun; and no adjournment or intermission whatever can take place until the same be closed.

Manner of voting and challenges.] The electors are required to vote by ballot; each person offering to vote delivers his ballot so folded as to conceal the contents, to one of the inspectors, in the presence of the board.

Ballot, form and contents.] The ballot must be a paper ticket, and contain written or printed, or partly written and partly printed, the names of the persons for whom the elector intends to vote, and shall designate the office to which each person, so named is intended by him to be chosen; but no ballot is allowed to contain a greater number of

names of persons as designated to any office, than there are persons to be chosen at the election to fill such office.

Sec. 9, chap. 240, Laws of 1847, provides as follows:

“§ 9. Except as otherwise provided in the subsequent subdivisions of this section, the ballots shall contain as follows :

“1. The names of all the persons voted for by any elector at any election, excepting electors of president and vice president, judges of the court of appeals, justices of the supreme court, county judges, separate officers to perform the duties of the office of surrogate and local officers to discharge the duties of county judge and surrogate, shall be upon one ballot, which ballot shall be endorsed ‘State,’ and the names of all the persons voted for by any elector at any election for judges of the court of appeals, justices of the supreme court, county judges, separate officers to perform the duties of the office of surrogate, and local officers to discharge the duties of county judge and surrogate, shall be upon one ballot, which ballot shall be endorsed ‘Judiciary.’

“2. In counties entitled to more than one member of Assembly, the name of the person voted for by any elector for member of Assembly, at any election, shall be upon a separate ballot and endorsed ‘Assembly.’

“3. In the city and county of New-York, the names of all persons voted for by any elector for Senator at any election, shall be upon a separate ballot and endorsed ‘Senate.’

“4. In the city and county of New-York, and in the county of Hamilton, the names of all the persons voted for by any elector for representative in Congress at any election, shall be upon a separate ballot and endorsed ‘Congress.’”

Electors.] When electors of president and vice president are to be chosen, a separate ballot must be given for them, which must be endorsed “Electors,” and must contain the names of the persons designated by the voter giving the same, to be electors of president and vice president, or any of them.

Term of office designated.] If at a general election there be one or more vacancies to be supplied in the office of judge of the court of appeals, justice of the supreme court, canal commissioner, or inspector of state prisons, and at the same election, one is to be elected to the same office for a full term, the term for which the person voted for is intended, must be designated on the ballot.

Congress designated.] If at a general election for representatives in Congress, any person named in a Congress ballot, shall be intended to supply a vacancy in the office of such representative, the ballots must designate the Congress for which each person is intended to be chosen.

Challenge and preliminary oath.] If any person offering to vote at any election be challenged in relation to his right to vote at that election, by an inspector, or by any other person entitled to vote at the same poll, one of the inspectors is required to tender to him the following preliminary oath: “You do swear (or affirm) that you will fully and

truly answer all such questions as shall be put to you, touching your place of residence and qualifications as an elector.”

Questions to persons challenged.] The inspectors or one of them then proceed to question the person challenged in relation to his name; his then place of residence; how long he has resided in the town or ward where the vote is offered; what was the last place of his residence before he came into that town or ward, and also as to his citizenship, and whether a native or naturalized citizen, and if the latter, when, where and in what court, or before what officer he was naturalized; whether he came into the town or ward for the purpose of voting at that election; how long he contemplates residing in the town or ward; and all such other questions as may tend to test his qualifications as a resident of the town or ward, citizenship and right to vote at that poll.

Vote when to be rejected.] If any person refuse to take the preliminary oath when so tendered, or to answer fully any questions which shall be so put to him, his vote must be rejected.

Qualifications.] After receiving the answers of the person so challenged, the board of inspectors point out to him the qualification if any, in respect to which he appears to them deficient.

Oath to be taken if challenge is not withdrawn.] If the person so offering persist in his claim to vote, and the challenge is not withdrawn, one of the inspectors then administers to him the following oath:

“You do swear (or affirm as the case may be,)

that you have been a citizen of the United States for ten days, and are now of the age of twenty-one years, that you have been an inhabitant of this State for one year next preceding this election, and for the last four months a resident of this county; that you have been for thirty days next preceding this election a resident of this Assembly district, (or Senate or Congressional district or districts, ward, town, village or city, as the case may be, naming any or all of the foregoing districts, ward, town, village or city from which the officer is to be chosen for whom said person offers to vote;) that you are now a resident of this town, (or ward as the case may be,) and of the election district in which you now offer to vote, and that you have not made any bet or wager, and are not directly or indirectly interested in any bet or wager depending upon the result of this election, and that you have not voted at this election."

Oath of a colored man.] If the person so offering to vote be a colored man, the following oath must be tendered to him: "You do swear (or affirm,) that you are of the age of twenty-one years; that for three years you have been a citizen of this State, that you have been an inhabitant of this State for one year next preceding this election, and during that time have been, and that you now are, seized and possessed of a freehold estate of the value of two hundred and fifty dollars, over and above all debts and incumbrances charged thereon, and have been actually rated and paid a tax thereon; and that you have been for the last four months a resident of this county; that you have been for the last thir-

ty days next preceding this election a resident of this Assembly district, (or Senate or Congressional district or districts, ward, town, village, or city, as the case may be, naming any or all of the foregoing districts, ward, town, village or city from which the officer is to be chosen for whom said person offers to vote;) that you are now a resident of this town, (or ward as the case may be,) and of the election district in which you now offer to vote, and that you have not made any bet or wager, and are not directly or indirectly interested in any bet or wager depending upon the result of this election, and that you have not voted at this election."

Vote when to be rejected.] If any person refuse to take the oath so tendered, his vote must be rejected.

Minutes respecting persons challenged, &c., to be kept and filed.] The inspectors of election must keep a minute of their proceedings in respect to the challenging and administering oaths to persons offering to vote, in which must be entered by one of them, the name of every person who shall have taken the oaths above prescribed, or either of them, specifying in each case whether the preliminary oath, or the general oath, or both, were taken; which minute and statement must be certified by such inspectors, and returned by them to the office at which their return of votes given at such election is made, and at the same time, and there be filed. The inspectors must also direct the clerks of the polls to designate by some appropriate mark, opposite to his name, every person entered on said list, who shall have taken the said oaths, or either of them.

Challenge as a convict.] If the person be challenged as convicted of an infamous crime, he is not required to answer any questions in relation to such alleged conviction; nor can any proof of such conviction be received, other than a duly authenticated record; but if a person so convicted vote at any such election, unless he has been pardoned and restored to all the rights of a citizen, he is deemed guilty of a misdemeanor, and on conviction will be imprisoned in the county jail for the term of six months.

Section 24 provides as follows:

Ballot boxes.] "At each annual and special election the inspectors shall provide and keep a box in which all ballots required to be endorsed 'State,' as directed in the ninth section of this title shall be deposited; also a box in which all ballots which are required by said ninth section to be endorsed 'Judiciary,' shall be deposited; also, in the proper counties a box in which all ballots which are required by said ninth section to be endorsed 'Assembly,' shall be deposited; also a box in which all ballots which are required by said ninth section to be endorsed 'Senate,' shall be deposited; also, a box in which all ballots which are required by said ninth section to be endorsed 'Congress,' shall be deposited."

When electors of president and vice-president are to be chosen, or amendments of the constitution proposed, separate boxes must be provided, in which are to be deposited the ballots for such electors, and on such proposed amendments.

Each box must be provided with a sufficient

lock, and must be locked before the opening of the poll, and the keys delivered to one of the inspectors, to be appointed by the board, and not opened during the election, except in the manner and for the purposes hereinafter mentioned.

An opening is required to be made in the lid of each box, not larger than will be sufficient for a single closed ballot to be inserted at one time, through which each ballot received, proper to be placed in such box, is to be inserted.

Ballots deposited.] When the board has finally received the ballot of an elector, one of the inspectors, without opening the same, or permitting it to be opened or examined, must deposit it in the box corresponding in title with the endorsement of the ballot.

Poll lists.] Each clerk of the poll must keep a poll list, which is to contain one column headed "names of voters," and so many additional columns as there are boxes kept at the election. The heading of each additional column is required to correspond with the name of one of the boxes so kept.

The name of each elector voting, must be entered by each clerk in the column of his poll list, headed "names of voters," and when there is more than one box kept, opposite such name must be written the figure 1, in each remaining column of such poll list, corresponding in its heading with the name of a box in which a ballot of the elector has been deposited.

Inspectors to challenge.] It is the duty of each inspector to challenge every person offering to vote,

whom he knows or suspects not to be duly qualified as an elector.

To preserve order.] The board of inspectors possess full authority to maintain regularity and order, and to enforce obedience to their lawful commands, during an election, and during the canvass and estimate of votes, after the closing of the poll; and have full authority to preserve peace and good order at and around the polls of the election, and to keep the access thereto open and unobstructed; and may appoint one or more electors to communicate their orders and directions, and to assist in the performance of the duties herein mentioned.

If any person shall refuse to obey the lawful command of the inspectors, or by disorderly conduct in their presence or hearing, interrupt or disturb their proceedings, they may make an order directing the sheriff, or any constable of the county, to take the person so offending into custody, and detain him until the final canvass of the votes is completed; but such order will not prohibit the person so taken into custody from voting at such election.

Such order can be executed by any sheriff or constable, to whom the same is delivered; or if none be present, by any other person deputed by such board in writing.

A sheriff or constable or other person refusing to execute such order, is liable to the like penalty and punishment as in case of refusal to execute any other process.

SECTION 2. OF THE CANVASS AND ESTIMATE OF THE VOTES
BY THE BOARD OF INSPECTORS, AND CERTIFYING THE
SAME.

Canvass when and how made.] As soon as the poll of an election is finally closed, the inspectors of the election in their several districts, must proceed to canvass the votes. Such canvass must be public, and is not permitted to be adjourned or postponed until it has been fully completed.

Comparison of poll lists.] The canvass commences by a comparison of the poll lists from the commencement, and a correction of any mistakes that may be found therein.

Ballots to be counted.] Each box being opened, the ballots contained therein, must be taken out and counted unopened, except so far as to ascertain that each ballot is single. And if two or more ballots be found so folded together as to present the appearance of a single ballot, they are to be destroyed, if the whole number of ballots exceed the whole number of votes, and not otherwise.

Ballots to be counted.] No ballot properly endorsed, found in a box different from that designated by its endorsement, can be rejected, but must be counted in the same manner as if found in the box designated by such endorsement, provided that by the counting of such ballot or ballots, it does not produce an excess of votes over the number of voters as designated on the poll lists.

Excess to be destroyed.] If the ballots are found to exceed in number the whole number of votes on the correspondent columns of the poll lists, they must be replaced in the box, and one of the in-

spectors, without seeing the same, must publicly draw out and destroy so many ballots unopened, as will be equal to such excess.

Estimate of votes.] The board then proceeds to canvass and estimate the votes. If after having opened or canvassed the ballots, it should be found that the whole number exceeds the whole number of votes entered on the poll lists, the inspectors must return all the ballots into the box, and thoroughly mingle the same; and one of the inspectors to be designated by the board, publicly draws out of such box, without seeing the ballots contained therein, so many of such ballots as are equal to the excess, which must be forthwith destroyed.

Statement of result to be made.] The canvass must be completed by ascertaining how many ballots of the same kind corresponding in respect to the names of persons thereon and the offices for which they are designated, have been received; and the result being found, the inspector is required to securely attach to a statement of such canvass, one ballot of each kind found to have been given for the officers to be chosen at such election, any or either of them, except those given for electors of president and vice-president; and they are required to state in words at full length immediately opposite such ballot, and written partly on such ballot and partly on the paper to which it is attached, the whole number of all the ballots that were received which correspond with the one so attached, so that one of each kind of the ballots received at such election for the officers then to

be chosen, shall be attached to such paper, with a statement of such canvass. They must also attach to such paper, the original ballots rejected by them as being defective, which were given at such election.

Canvass and statement of votes for president and vice-president.] When electors of president and vice-president are chosen at any election, the inspectors must make a separate canvass and statement of votes given for electors, in the manner above prescribed, by ascertaining how many ballots of the same kind, corresponding in respect to the names thereon, have been received; and the result being found, the inspectors will securely attach to paper one original ballot of each kind found to have been given for electors, and will state, in words at full length opposite such ballot, and written partly thereon, and partly on the paper to which it is attached, the whole number of ballots for electors, that were found to have been received, corresponding with the one so attached. They must also attach to such paper all original ballots for electors, rejected by them as being defective.

Form of statement.] The statement to be made by the inspectors must contain a caption, stating the day on which, and the number of the district, the town or ward, and the county at which the election was held, in relation to which such statement is made; it must also contain a statement showing the whole number of ballots taken for each person, designating the office for which they are given, which statement is required to be writ-

ten in words at length ; and at the end thereof, a certificate that such statement is correct in all respects ; which certificate must be subscribed by the inspectors.

Copy to be filed.] A true copy of the several statements made by the inspectors, must be made and certified by them, and immediately filed by them, in the office of the clerk of the town or city.

Poll lists to be filed.] The poll lists kept at such election must be filed by the inspectors, or one of them, in the office of the clerk of the town or city in which such election was held, and be there preserved.

Ballots to be destroyed.] The remaining ballots not so pasted or attached, must be destroyed, and the board of inspectors having discharged the duties above mentioned, is then dissolved.

Original statements to be delivered to supervisors.] The original statements duly certified, must be delivered by the inspectors, or by one of them to be deputed for that purpose, to the supervisor of the town or ward, within twenty-four hours after the same are subscribed. If there be no supervisor, or if he is disabled from attending the board of county canvassers, such original statement must be delivered to one of the assessors of the town or ward in which such election was held. 1 R. S. 351, 4th ed.

State ballot,] The ballot required to be endorsed "State," contains the names of the persons for the following offices, to wit: For Governor, Lieutenant Governor, Secretary of State, Comptroller, Treasurer, Attorney General, State Engineer and

Surveyor, Canal Commissioners, Inspectors of State Prisons, Clerk of the Court of Appeals, Senator, Representative in Congress, Member of Assembly, (*in those counties where they elect but one ; but where two or more are elected in a county, the name of the member of Assembly for each Assembly district, appears on a separate ballot,*) District Attorney, Sheriff, County Clerk, Coroners, Superintendent of the Poor, and (in the city of New-York) Register. These offices will not all be named upon the State ticket each year, for the reason that many of them are not filled annually.

Judiciary ballot.] The ballot to be endorsed "Judiciary," contains the names of the following offices : Judges of the Court of Appeals, Justices of the Supreme Court, County Judge, Surrogate, Justices of the Sessions, Special County Judge and Local Officer.

Electoral ballot.] The ballot endorsed "Electors," must contain the names of the persons designed to be voted for to fill the office of Electors of President and Vice President of the United States.

Assembly ballot.] Where there is more than one member of Assembly to be elected in a county, the name of the person designed by the voter to fill that office, will appear on a separate ballot from all the others, and must be endorsed "Assembly."

Voter's qualification.] It has been seen before at page 298, the nature of the oath to be taken, when the voter is challenged. This oath indicates in a measure what must be the qualification of the elector.

1st. He must have been a citizen of the United States at least ten days.

2d. He must be of the age of twenty-one years.

3d. He must have been an *inhabitant* of the State one year next preceding the election.

4th. A resident of the county four months next preceding the election.

5th. For the thirty days next preceding the election, a resident of the Assembly district, Congressional district, Senate district, ward, town, village or city, from which the officer is to be chosen for whom such person offers his vote.

6th. He must be a resident of the town or ward and of the election district in which he offers his vote.

7th. He must not be interested in any bet or wager depending upon the result of the election.

8th. He must not have voted at that election.

Unless the voter has all these qualifications, and is free from all these objections, he is not entitled to vote.

Who are citizens.] It frequently becomes a very perplexing question before the board of inspectors, to determine who are citizens.

It has been held that the infant children of aliens, though born out of the United States, if dwelling within the United States at the time of the naturalization of their parents, become citizens by such naturalization. *West v. West*, 8 *Paige*, 433. By a law passed by the Congress of the United States in 1795, it is provided, "That the children of persons duly naturalized, dwelling within the United States, and being under the age of twenty-

one year at the time of such naturalization, and also the children of citizens of the United States born out of the limits and jurisdiction of the United States, shall be considered citizens of the United States." Vide also *State v. Perry*, 5 *Eng. Rep.* 621; (*Arkansas*.)

It is also provided that in case an alien should die after having filed the declaration of his intention to become a citizen, and before he became actually naturalized, his children would be deemed citizens. 2 *Kent's Com.* 65.

The residence of a minor child with his father, within the United States, during the whole revolutionary war, and until after the treaty of peace of 1783, entitles such child to all the privileges of citizenship; even though he should on coming of age remove to a British province, yet upon a subsequent return to the United States he becomes entitled to all the rights of citizenship. 17 *Shep. (Maine)*, 511.

The strongest evidence an adopted citizen can present of his citizenship, and right to vote, is a regular and bona fide certificate of citizenship from a court of record having authority to grant such certificates. Notwithstanding the board may be satisfied that the certificate was granted by the clerk of the court, and not by the court itself, and therefore irregular, (18 *Barb.* 444;*) yet if the certificate is fair on its face, and embodies the requirements of law, the inspectors would be bound

* In the case of *Clark*, (18 *Barb.* 444,) Judge Dean decides that the practice of clerks of courts to issue certificates of citizenship without any application to the court, is an abuse of power which needs to be corrected.

to regard the person to whom it was issued, so far as his right to vote would be concerned, a citizen.

It is not absolutely necessary that the adopted citizen should present his certificate, it is sufficient if he can truthfully swear that one has been granted to him.

It is sometimes the case that fraudulent votes are offered by persons who pass around a genuine certificate from one to another, and the inspectors by not taking the care to examine the name in the certificate, admit illegal votes.

It has been seen that in addition to the general oath, the form of which has been given, the inspectors if required by an elector, must administer to a challenged party an oath in the following form, called the preliminary oath: "You do swear (or affirm) that you will fully and truly answer all such questions as shall be put to you, touching your place of residence and qualifications as an elector."

The law provides that the inspectors or one of them, shall then proceed to question the challenged party touching his residence, and citizenship, and they may propound all such questions as may tend to test his qualifications in that regard. These questions are sometimes asked by electors (other than the inspectors;) that practice always gives rise to bitterness and asperity of feeling, and hence the better way is to follow the requirements of the law, and have all such questions propounded through the inspector. He will always cheerfully put all reasonable questions which any elector

may desire to have propounded to the challenged party. A number of questions, such as were deemed appropriate to be put, are given by way of a form or precedent in a pamphlet entitled "Election Law of 1842 and 1847."

The compiler of that pamphlet, the then secretary of state, remarks that those questions are not the only ones which may be put.

It is obvious from reading the law, that any question may be asked which may tend to test the qualifications of the person offering his vote, in regard to his residence, citizenship and right to vote.

This provision is manifestly salutary, because there are men of sufficient hardihood to take the general oath, knowing that they were thereby committing perjury, hoping to escape observation, and conviction and punishment, who if they were required to submit to an examination, would betray their defects so palpably, that they would shrink from taking the general oath. It seems to be a well settled opinion, however, that after an examination under the preliminary oath, if the person offering to vote should be informed by the inspectors that they deemed him unqualified, still if he persisted in voting, and upon taking the general oath, they would be bound to administer that oath and receive his vote; but it would be their duty immediately to take steps to secure such an offender to the end that he be convicted and punished.

Certain persons not to be permitted to vote.] It is provided by the laws of 1847, chap. 240, sec. 15, that no person shall be permitted to vote at any election, who previous thereto, shall have been con-

victed of bribery or any infamous crime, unless he shall have been pardoned and restored to all the rights of citizenship, or who shall make any bet or wager, or be directly, or indirectly interested in any bet or wager depending upon the result of any election at which such person may offer to vote. 1 *R. S.* 349, 4th ed.

Penalty for permitting such persons to vote.] In case any inspector of election shall knowingly and willfully permit or suffer any person to vote at any election who is not entitled to vote thereat, the inspector so offending, shall, on conviction, be adjudged guilty of a misdemeanor, and shall be sentenced to pay a fine of five hundred dollars, and be imprisoned in the county jail for six months. 1 *R. S.* 349, sec. 36, 4th ed.

Residence of voters.] Another question frequently embarrasses the inspectors at the polls, and that is, the question of the *residence* of parties offering to vote. Residence is defined to be the act or state of being seated or settled in a place; the act, state or habit of dwelling or abiding in a place. *Burrill's Law Dic.* 891. The place which one has made his seat, abode or dwelling. A man's home. Residence imports not only personal presence in a place, but an attachment to it by those acts or habits which express the closest connexion between a person and a place. 1 *Blacks. Com.* 390. *Residence* has been declared to mean the same thing with inhabitancy, by Walworth, Ch. 8 *Wend.* 140. Spelman makes it synonymous with habitation. The same writer also makes it synonymous with domicil, and so do other high authorities; but do-

mical in some of its applications imports something more than residence. 2 *Kent Com.* 430, 431. Judge Woodworth was of the opinion that the words resident and inhabitant, mean the same thing. *Rosvelt v. Kellogg*, 20 *J. R.* 208. The residence, to create it, may be long, or short, according to circumstances. It depends on the actual or presumed intention of the party.

The place where a man carries on his established business, or professional occupation, and has a home and permanent residence, is his domicile. Though his family reside part of the year at another place, such place is regarded only as a temporary residence, and the home domicile for business takes away the character of domicile from the other. The original residence always continues until he has fairly changed it for another. There must be *intention* and *act* united, in order to effect a change of residence.

If a person has two contemporary domicils, and a residence in each alternately, of equal portions of the time, the rule which Lord Alvanly was inclined to adopt, was that the place where the party's business was carried on should be considered his residence. 2 *Kent Com.* 431. *Andrews v. Heriot*, 4 *Cow.* 516. Should the party be engaged in business in two localities, and residing as above stated, it would seem to be a matter resting in his own mind as to which he would deem his residence in the legal acceptance of the term.

The question whether a person has changed his residence or not, rests frequently in the conscience of the party. In the case of *Crawford v. Willson*, 4

Barb. 504, it was held that the words, *legal residence* and *domicil* are convertible terms, and that if a person leaves the place of his domicil temporarily, or for a particular purpose, and does not take up a permanent residence elsewhere, he does not change his domicil, nor lose his vote.

These general principles will aid the inspectors at the polls in giving advice upon this point, where questions of this character are presented to them by prudent and conscientious electors who may be in doubt as to the place where they should vote.

Preserving order.] The statute clothes the inspectors with very plenary power in respect to preserving order. It is of the highest importance that this duty be enforced.

In some localities men are deterred from attending the polls, owing to the confusion and riot that surrounds the ballot box. No inspector who has any self respect, will permit a fair access to the polls to be interrupted or obstructed for any length of time. As has been seen, the inspectors have the right, in order to preserve peace and good order around the polls, to appoint as many electors as they please, to communicate their orders and assist in preserving quiet and good order. In many districts it would be well to appoint such assistants at the opening of the polls, with the understanding that they are to be retained for that purpose during the day. Should this duty be neglected until a disturbance occur, the proper electors for such a duty might not be on hand, and much delay might arise before order could be restored.

Exposing ballots.] The object in having the ballot

folded so as to conceal the name of the candidate voted for, is to allow the elector to give expression to his will unbiased by any influences surrounding the polls. Inspectors sometimes, forgetful of their duty, expose the caption of the ballot to some inquisitive bystander, by which he learns the nature of the vote cast, and the intent of the statute is thus defeated. This practice cannot be too strongly condemned.

Inspectors act in a measure judicially in canvassing votes.] The duties of inspectors of elections are partly judicial and partly ministerial. In determining whether ballots were intended for a given candidate or not, they act in a judicial capacity; and unless their determination is impeached by some legitimate evidence, it must be allowed to stand. 14 Barb. 261.

The addition of junior to a name is mere matter of description, and forms no part of the name. So with the middle letter of a name. The law knows of but one christian name to each person. Hence should there be any of these additions to the real name of the candidate, the inspectors should in good faith ascertain, if possible, for whom the ballot was intended, and allow it accordingly; for in point of fact it is "the will of the electors, and not the certificate of the inspectors which gives the right to the office." 4 Selden, 68.

Where votes contain the names of the candidates improperly spelled, or where the candidate is designated by a wrong name, or when there is any defect in naming the candidate sufficient to create a doubt for whom the ballot was intended,

the inspectors return such defective ballots to the county canvassers. (*For forms to be used by inspectors, see Appendix, Nos. 194–208.*)

If the inspectors cannot find persons who will accept the office of clerks of the poll, the election is not to fail, but the inspectors should perform the duty of clerks. *The People v. Cook*, 4 *Selden*, 69.

CHAPTER XI.

OF THE CONSTABLE.

SECTION 1. How chosen, and his duty relating to civil process.

2. His duty under the criminal laws.

SECTION 1. HOW CHOSEN, AND HIS DUTY RELATING TO CIVIL PROCESS.

This office was established in England as early as the year 901, under the reign of Alfred the Great. The constable by the common law is a peace officer of his county, and is clothed with authority to arrest his fellow citizens when he may find them actually committing a *felony*, or a *breach of the peace*, without a warrant. His office is one of much responsibility, and when he discharges his duty faithfully, and as the law requires, he exerts an influence which is favorably felt in community. Sir Francis Bacon, in answer to the question “from what rank and order of men should constables be selected?” replied, “they ought to be of the better sort of men, not aged or sickly, but of able bodies, capable of keeping watch and enduring toil and fatigue.”

How chosen.] Constables are chosen by ballot at

the annual town meeting in towns. The electors determine at the opening of the annual town meeting, by resolution, which must be entered at the time in the minutes of their proceedings, and before they proceed to receive any ballots, what number of constables they will have in the town for the ensuing year, and the number determined upon are to be chosen. 1 R. S. 646, 4th ed. 9 Wend. 333.

If the electors by such resolution limit the number to four, ballots cast for more than four persons, for that office, are void. 8 Wend. 396.

Before he enters upon the duties of his office, he must take and subscribe the constitutional oath. (*Form, Appendix, No. 1.*)

This oath must be taken within eight days after notice of his election or appointment, and within the same time he must execute, in the presence of the supervisor or town clerk of the town, an instrument in writing, with one or more sureties, to be approved of by such supervisor or town clerk, by which such constable and his sureties shall jointly and severally agree to pay to each and every person who may be entitled thereto, all such sums of money as such constable may become liable to pay, on account of any execution which may be delivered to him for collection. 1 R. S. 655, 4th ed. (*Form of bond, Appendix, No. 207.*)

Actions on such bond.] All actions on such bond against the constable or his sureties, must be brought within two years after the expiration of the year for which the constable was elected.

Refusal to serve.] An omission to take the oath, and give the security, within the time above mentioned, is deemed a refusal to serve. 1 R. S. 656, 4th ed.

Tenure of office.] He holds his office for one year, and until others are chosen or appointed to supercede him. 17 Wend. 81.

Penalty for acting without oath.] Should he enter upon the duties of his office without taking the constitutional oath above mentioned, he forfeits to the town the sum of fifty dollars.

Vacancies, when, how supplied.] The office is deemed vacant when the electors have neglected to make a choice; for instance, should the votes be equally divided on a candidate, at an annual town meeting, the electors should proceed at once to vote again, and should they adjourn without making a choice, it would be proper to fill the office by appointment, and not by calling a special town meeting. 16 John. 49.

The office may become vacant by the death of the incumbent, or his refusal to serve, or his resignation, or removal out of the town, or his conviction of an offence which involves the violation of his official oath.

How appointed.] In case of vacancy, constables may be appointed by any three justices of the peace in town, by warrant under their hands and seals. 1 R. S. 657, 4th ed.

Summons.] The summons issuing from a justice's court, is required by statute to be directed to any constable of the county where the justice resides,

commanding him to summon the defendant, to appear before the justice, who issued the same, at a time and place to be named in such summons, not less than six, nor more than twelve days from the date of the same, to answer the plaintiff in the plea in the same summons to be mentioned. 2 *R. S.* 429, 4th ed.

Summons, when and how to be served.] The summons must be served at least six days before the time of appearance mentioned therein. If the defendant can be found it must be served by reading the same to him, and (if he requests it,) delivering a copy thereof. If the defendant cannot be found, it must be served by leaving a copy thereof at the defendant's last place of abode, in the presence of some one of the family of suitable age and discretion, who must be informed of its contents.

Fractions of days not counted.] A summons in a justice's court returnable in the forenoon of the eighth day of a month, is well served in the afternoon of the second day of the same month. Fractions of a day in the service of process are not regarded in the computation of time. 10 *Wend.* 422.

Return.] The constable serving the summons must return thereon in writing the *time* and manner in which he executed the same, and sign his name thereto, that is to say, if he served it personally, he must so say, and date it and sign, and if served by copy, then the constable will so state in his return; for instance, if the summons is against only one defendant, and personal service is made upon him, the following return would be proper:

“The within summons personally served, August
, 1855.

Fees \$0.50.

A. B., *Constable*.

And if against two or more defendants and all are personally served, then add the words “on both or all the within defendants,” as the case may be. If judgment should be rendered in a case, where it did not appear in the return to the process upon what day the process was served, it would be reversed unless the party appeared on the trial and waived the defect. *Stewart v. Smith*, 17 *Wend.* 517.

Short summons.] Suits may also be commenced by 'short summons against non-resident defendants. This differs from the long summons only in the interval between its date and return. It must be returnable not less than two nor more than four days from its date, and must be served at least two days before the time of appearance mentioned therein. *Cow. Treat.* 308, 4th ed.

Warrants in civil actions.] Civil actions may be commenced by warrant before justices of the peace, (2 *R. S.* 430, 4th ed.,) and when so commenced, the warrant must be directed to any constable of the county where the justice issuing the same resides, commanding the constable to take the defendant and bring him forthwith before such justice, to answer the plaintiff, in a plea, in the same warrant to be named; and must require the constable after he shall have made the arrest to notify the plaintiff of the arrest.

Warrant, how served.] The constable to whom the warrant is delivered, must serve the same by ar-

resting the defendant and taking him forthwith before the justice issuing the same. If the justice on the return be absent, or is unable to hear or try the cause, or if the justice is found to be a material witness in the cause, the constable must take the defendant before the next justice of the city or town, who is required to take cognizance of the cause, and proceed thereon the same as if the warrant had been issued by him.

Returning warrant.] The constable must return in writing the manner in which he executed the warrant, and the fact whether he has or has not notified the plaintiff.

Detention of defendant.] Upon being brought before the magistrate, the defendant must be detained in the custody of the constable until the justice directs his release, except that he may not be detained longer than twelve hours, from the time he is brought before the justice, unless within that time the trial of the cause shall be commenced, or unless it be delayed at the instance of the defendant.

Suits by attachment.] When suits are commenced by attachment such process must state the amount of the debt sworn to by the applicant. It commands any constable of the county in which the justice resides, to attach so much of the goods and chattels of the debtor as will be sufficient to satisfy such debt, and safely to keep the same in order to satisfy any judgment that may be recovered on such attachment, and to make return of his proceedings thereon to the justice who issued the same, at a time therein to be specified, not less

than six nor more than twelve days from the date thereof. 2 R. S. 432, 4th ed.

Mode of executing the attachment.] The constable receiving the attachment must execute the same at least six days before the return day, and must attach, take into his custody, and safely keep such part of the goods and chattels of the defendant as are not exempt from execution, as will be sufficient to satisfy the demand of the plaintiff. He must next immediately make an inventory of the property seized, and leave a copy of the attachment, and of the inventory, certified by him, at the last place of residence of the defendant, but if the defendant have no place of residence in the county where the goods and chattels are attached, such copy and inventory must be left with some person in whose possession the goods are found.

If the defendant can be found in the county, the constable should serve a copy of the attachment on him. *Cook v. Pierce*, 3 Denio, 317.

If a bond be given to the constable with sufficient surety, he must not remove the goods. (*Form of bond*, Appendix, No. 209.)

Bond by claimant of goods.] If any person claims the goods attached, he may, after the seizure and at any time before execution has been issued upon the judgment obtained on such attachment, execute a bond to the plaintiff with sureties to be approved by the constable, or by the justice who issued the attachment, in a penalty double the value of the property attached, conditioned that in a suit to be brought on such bond within three months from the date, such claimant will establish that

he was the owner of the goods seized at the time of such seizure, and in case of his failure to do so, that he will pay the value of the goods so claimed with interest. 2 R. S. 432, 4th ed. (*Form of bond, Appendix, No. 210.*)

When constable to deliver up property.] Upon either of the bonds aforesaid being executed and delivered to the constable, he must deliver up the property seized by him to the obligor in such bond.

Return of attachment.] The constable must make a return at or before the day named in the attachment for that purpose, with all his proceedings in writing, subscribed by him, with a copy of the inventory of the goods attached, certified by him, and with any bond that may have been executed as above mentioned. (*Form of inventory, Appendix, No. 211. Form of return, No. 212.*)

Short attachments.] Provision was made by the act of 1831, called the non-imprisonment act, for the issuing of a short attachment against non-resident defendants. A short attachment is made returnable not more than four nor less than two days. Such an attachment is void if made returnable more than four days after its date. 24 Wend. 485.

The mode of making the inventory and the return, is substantially the same as in case of a long attachment. The constable must see that at least two full days will transpire after the service and before the return in case of a short attachment. In seizing the property, selling the same, and determining what property is liable to be attached, the same rules must govern the constable that prevail in regard to executions. (*See directions rela-*

ting to executions.) The constable is bound to protect the property which he may attach, from waste. He is the bailee of the same and is responsible for its safe keeping. 1 *Cow. Treatise*, 567, 3d ed.

He cannot serve an attachment in his own favor. 1 *Cow. Treatise*, 556.

Venire, what to contain.] The venire issued by a justice to summon a jury to try civil actions before justices of the peace, must be directed to any constable of the county wherein the cause is to be tried, commanding him to summon twelve good and lawful men in the town where such justice resides, qualified to serve as jurors, and not exempt from serving on juries in courts of record, who shall be in no wise of kin to the plaintiff or defendant, nor interested in such suit, to appear before such justice, at a time and place to be named therein, to make a jury for the trial of the action between the parties named in such venire. 2 *R. S.* 441, 4th ed.

What constables may not serve venire.] No constable who shall have been employed to act, or who may have acted as attorney or agent in respect to any claim or matter in controversy, can be permitted to summon any jury in any justice's court, which shall be summoned to try any question in relation to any such claim or matter.

Venire, how executed and returned.] The constable to whom any venire is delivered must execute the same fairly and impartially, and should not summon any person whom he has reason to believe is biased or prejudiced for or against either of the parties. He must summon the jurors person-

ally, and make a list of the persons summoned, and certify the same and annex it to the venire, and make his return to the justice. 2 R. S. 441, 4th ed.

The constable may summon bystanders if a sufficient number do not appear on the venire, when so directed by the court, but he must see that they are free from any legal objections.

The manner of service is by reading or stating the substance of the venire to each person summoned. In stating the substance of the venire, it would be absolutely necessary that the name of the justice and the time and place of trial should be stated. The return to the venire may be in the following form :

“I hereby certify that by virtue of the within precept, I have personally summoned as jurors the several persons named in the annexed list.”

Dated August , 1855.

A. B., Constable.

2 Cow. Treatise, 340, 3d ed.

Custody of the jury, and constable's oath.] After the evidence in a cause, which a jury may be called to try, is all in, the constable, unless the parties otherwise agree, must have charge of the jury until they agree upon their verdict.

The justice administers to the constable the following oath: “You swear in the presence of Almighty God, that you will, to the utmost of your ability, keep the persons sworn as jurors on this trial together, in some private and convenient place, without any meat or drink, except such as shall be ordered by me ; that you will not suffer

any communication, orally or otherwise, to be made to them; that you will not communicate with them yourself, orally or otherwise, unless by my order, or to ask them whether they have agreed upon their verdict, until they shall be discharged; and that you will not before they render their verdict, communicate to any person the state of their deliberations, or the verdict they have agreed on."

The oath indicates clearly the duty of the constable. He is sometimes importuned to furnish jurors the minutes of the evidence of the trial, or some papers or documents that may have been used on the trial. To furnish any such, is a violation of his oath, unless by the direction of the court. So strict is the rule that all their deliberations must be free from any bias or influence from any quarter, that it was held in the case of *Durfee v. Erland*, sufficient ground to reverse a judgment, that it appeared that the jury had in their possession the minutes of the testimony taken by the counsel in the cause. 8 *Barb.* 46; see also 24 *Wend.* 185. (*The qualifications of jurors are pointed out at page 11, ante.*)

Who exempt.] The following persons among others are exempt from jury service:

1. Non-commissioned officers, musicians and privates of any uniformed company or troop, duly equipped and uniformed according to law.
2. Members of any company of firemen duly organized according to law.
3. Persons in the actual employment of any

glass, cotton, linen, woolen, or iron manufacturing company, by the year, month or season.

4. Superintendents, engineers and collectors of any canal authorized by the laws of the State, any portion of which shall be actually constructed and navigated.

5. Ministers of the gospel, teachers in any college or academy, and all persons specially exempted by law from serving on juries.

When the constable is well satisfied that persons whom he would be inclined to summon are exempt, he should omit to summon them, but if he has reason to believe that such exemption is not claimed in good faith, he should make the service and leave the party to make his excuse before the justice.

Subpœna.] A subpœna may be served by a constable or any other person. The service should be made by reading the same or stating the contents to the witness, and by paying or tendering the fees allowed by law for one day's attendance.

Execution, its contents.] Executions with which constables have to do, are issued from justices' courts. They must be directed to any constable within the same county where the justice resides, commanding him to levy the debt or damages and costs, of the goods and chattels of the person against whom the same shall be issued, (excepting such goods and chattels as are by law exempted from execution,) and to bring the money, at a certain time and place therein to be mentioned, before such justice, to render to the party who recovered the same; and if the execution be issued against a

male person, and the judgment upon which it was issued was rendered for a cause of action for which the defendant may be imprisoned, then it must command the constable, if no goods and chattels can be found, or not sufficient to satisfy such execution, to take the body of the person against whom the execution shall be issued, and convey him to the common jail of the county, there to remain until duly discharged. 2 R. S. 446, 4th ed.

Execution against joint debtors.] When judgment is obtained against joint debtors upon process not served upon all the defendants, execution may be issued in form against all; but the justice must endorse the names of such of the defendants who did not appear in the suit as were not served with process.

Execution, how served in such case.] Such execution must not be served upon the persons of the defendants whose names are so endorsed; nor can it be levied upon the sole property of any such defendant, but it may be collected of the personal property of such defendant, owned by him as a partner of the other defendants, appearing or served with process.

Execution, when returnable.] Every execution issued by a justice must be dated on the day it *actually* issued, and made returnable sixty days from the date of the same. 2 R. S. 447. *Code of Procedure*, sec. 64. Executions may be renewed from time to time.

Duty of constable upon receiving execution.] The first step after receiving the execution is to call

upon the defendant, if he may be found, and to ascertain where the property is to be found out of which the execution is to be satisfied. When necessary to make a levy, it is to be done, when practicable, by the act of taking the property into custody and removing it. This is the strongest kind of a levy. This is not absolutely necessary, but to constitute a levy, the property should be taken into the actual or *constructive* possession of the officer. 2 *Cow. Treatise*, 541, 3d ed.

A seizure of a part of the goods in a dwelling house, in the name of the whole, is a good seizure of all. *Id.*

The goods should be within view, and under the power of the officer, in order to make the levy complete. 16 *John*. 288. They must be subject to the immediate disposition and control of the officer. *Van Wyck v. Pine*, 2 *Hill*, 666.

It is not absolutely necessary that the goods should be removed, they may be left in the custody of the defendant, at the risk of the plaintiff or the officer, or on obtaining, as is customary, a receiptor for their delivery on demand. (*Form of receiptor*, *Appendix*, No. 218.)

The constable upon taking goods into his custody by virtue of an execution, must endorse the time of levying, and immediately give public notice by advertisement, signed by himself, and put up at three public places in the city, or town, where the property is taken, of the time and place within such city or town, when and where the property will be exposed for sale. The notice must describe the goods and chattels taken, and must be

put up at least five days before the day appointed for sale. (*Form of notice, Appendix, No. 215.*)

Sale and return of execution.] At the time and place appointed, if the goods and chattels are present, and are pointed out to the inspection and examination of the bidders, the constable must expose them to sale at vendue, to the highest bidder. If the property sells for a sum sufficient, or more than sufficient to pay the execution, he must pay the debt or damages and costs levied, to the justice who issued the same, returning the surplus if any, to the person against whom the execution was issued. If a part of the amount is raised by the sale, such amount should be returned, whatever it is, endorsing on the execution the amount collected, with a return stating the facts.

Constable may not purchase at sale.] The constable is prohibited from purchasing directly or indirectly any property at any sale made by him upon execution. Every such purchase is absolutely void. 2 R. S. 448, 4th ed.

When defendant may be imprisoned.] For want of property, the constable is required in cases authorised by law, if the execution direct it, to take the body of the defendant and convey him to the common jail of the city or county. A female may not be imprisoned upon execution issued from a justice's court.

Consequences of not returning execution.] Should the constable neglect to return the execution within five days after the return day thereof, the party in whose favor the same was issued, may maintain an action against him, and recover the amount of

the execution with interest from the time of the rendition of the judgment upon which the same was issued. 2 R. S. 449, 4th ed.

Not to act after return day.] He has no authority to levy upon or sell property, or imprison the defendant after the return day of the execution, unless it has been renewed, nor may he do any act under a renewed execution after the expiration of the time or times for which the same may have been renewed.

What property exempt.] It is provided that the following property, when owned by any person being a householder, shall be exempt from levy and sale, under any execution, and such articles thereof as are movable, shall continue so exempt, while the family of such person, or any of them, may be removing from one place of residence to another :

1. All spinning wheels, weaving looms and stoves, put up or kept for use by the family ;

2. The family bible, family pictures and school books, used by or in the family of such person, and books not exceeding in value fifty dollars, which are kept and used as part of the family library ;

3. A seat or pew occupied by such person or his family, in any house or place of public worship ;

4. All sheep to the number of ten, with their fleeces, and the yarn or cloth manufactured from the same ; one cow, two swine, the necessary food for them ; all necessary pork, beef, fish, flour and vegetables, actually provided for family use, and

necessary fuel for the use of the family for sixty days ;

5. All necessary wearing apparel, beds, bedsteads and bedding, for such person and his family ; arms and accoutrements required by law to be kept by such person ; necessary cooking utensils ; one table ; six chairs ; six knives and forks ; six plates ; six tea cups and saucers ; one sugar dish ; one milk pot ; one tea pot and six spoons ; one crane and its appendages ; one pair of andirons and a shovel and tongs.

6. The tools and implements of any mechanic, necessary to the carrying on of his trade ; but the amount thereof shall not exceed twenty-five dollars in value.

7. Necessary household furniture and working tools and team owned by any person, being a householder, or having a family for which he provides, to the value of not exceeding one hundred and fifty dollars ; provided that such exemption shall not extend to any execution issued on a demand for the purchase money of such furniture or tools or team or other articles now enumerated by law. 2 *R. S.* 450, 4th ed.

Necessary wearing apparel is not exempted in all cases, but only when it is owned by the householder, or head of the family. The exemption extends to apparel furnished by him for the use of others living with him, but does not embrace clothing of one living with the family, who provides them for himself. *Browne v. Witt*, 19 *Wend.* 445.

Wool, or articles manufactured from it, not exceeding in quantity the fleece from ten sheep, are

exempt from execution, under the equity of the statute, in the hands of a householder not owning any sheep. *Hall v. Penney*, 11 *Wend.* 44. *Brackett v. Watkins*, 21 *Wend.* 68.

Potatoes in the field, if necessary for the family use, are exempt. Necessary vegetables are exempt in any stage of the process of obtaining them for the family use, whether by planting them or in any other way. *Carpenter v. Herrington*, 25 *Wend.* 370.

Bank bills or money, and everything belonging to the debtor of a tangible nature, except mere choses in action, and articles expressly exempted by the statute, may be taken and sold under an execution. *Handy v. Dobbin*, 12 *Johns.* 220. *Holmes v. Nuncaster*, 12 *Johns.* 395. See *Bogart v. Perry*, in error, 17 *Johns.* 351.

A promissory note is not the subject of levy. *Denton v. Livingston*, 9 *Johns.* 100. *Ingalls v. Lord*, 1 *Cowen*, 240.

Wheat growing, is a chattel, and if raised upon the land of another, by virtue of an agreement between him and the defendant, may be levied upon and sold under an execution against the latter. *Whipple v. Foot*, 2 *Johns.* 418.

A growing crop, raised annually by labor and cultivation, is, as respects an execution against the owner, a mere chattel; but the purchaser's title under the execution is subject to, and liable to be divested by the foreclosure of a mortgage of the lands. *Shepard v. Philbrick*, 2 *Den.* 174.

By the term "goods and chattels" in the act, is meant personal and movable property, not chat-

tels which savor of the realty and are of a permanent nature. *Putnam v. Westcott*, 19 *John.* 73.

Leasehold property, or a term for years, cannot therefore be sold under an execution issued by a justice's court. *Ib.*

A constable having an execution, went to a field with the defendant, and with certain colts in view, made a note of a levy upon them on the execution; held a good levy. *Green v. Burke*, 23 *Wend.* 490.

The constable may take a receipt for the future delivery of property attached by him, but the receiptor may defend by showing that the property was taken from him by virtue of a paramount title. *Harvey v. Lane*, 12 *Wend.* 562.

Renewal.] Where the officer having levied, omits to sell within the life of the execution, it may be renewed and the sale had under the renewal. *The People v. Hopson*, 1 *Den.* 574.

An execution may be renewed on the last day it has to run, and, being so renewed, it will retain its lien on goods before levied upon under it. *Chapman v. Fuller*, 7 *Barb.* 70.

The justice's omitting to enter the constable's return on his docket, cannot affect its regularity, nor make the constable liable. *James v. Hartney*, 6 *Hill*, 487.

Where personal property is levied upon, but not removed from the debtor's possession, the officer may advertise it to be sold, and sell it on the premises of the debtor, taking care to do no unnecessary damage; and third persons may rightfully attend the sale as bidders. Per Bronson, J. *The People v. Hopson*, 1 *Den.* 574.

Certain promises void.] A promise by a constable to a defendant against whose goods he had an execution from a justice, that if defendant will deliver property as security that he will not sell it under thirty days is void. 2 *Johns. Rep.* 193.

Any constable of the county may serve all process issuing out of a justice's court in any part of the county. 1 *Johns.* 502.

A constable cannot maintain an action against a defendant for the amount paid the plaintiff on an execution which he has suffered to sleep in his hands. 3 *Johns.* 434.

Must not oppress.] An action lies against a constable or other officer for executing process in an unreasonable manner, tending to vex, harrass and oppress the party. 5 *Johns. Rep.* 125. As where a constable refused to take property tendered, but sold a horse of A. by warrant for a military fine, with the avowed intent to hurt his feelings, the constable was held liable to an action at the suit of A. *Id.*

May adjourn sale.] A sale under an execution and judgment in a justice's court may be adjourned at the discretion of the officer; and the completion of the sale at a different time or place, if no fraud or abuse appears, will be valid. 5 *Johns.* 345.

His proceedings not void for irregularity in his appointment.] In trespass the defendant justified as a constable under an appointment of three justices, that he took the goods as constable by virtue of an execution issued against the goods of the plaintiff: it was held that the appointment made by the justices was a judicial act, and being within

their jurisdiction was conclusive and valid until quashed or set aside on certiorari, and could not be questioned in a collateral action. 8 *Johns. Rep.* 69.

When claim lost upon goods.] If a constable, having taken goods in execution delivered them to A. on his giving a receipt promising to deliver them on demand, and the constable does not demand and sell them within thirty days, he loses by his neglect, all claim and title to the possession of the goods. 9 *Johns. Rep.* 361.

May collect execution after his term of office expires.] A constable to whom any execution may have been issued and delivered, and whose term of office has expired before the time within which the collection or return of such execution is required by law, is required to proceed in all matters relative to such execution, in the same manner as if the term of office of such constable had not expired. Himself and his bail remain liable to the same extent as if he were yet in office. 2 *R. S.* 459; 4th ed. *Alderman v. Shaw*, 7 *Wend.* 220.

Not to officiate as attorney.] The constable serving either the original or jury process in a cause, is prohibited from appearing and advocating for either party at the trial, but may act as attorney in any other stage or proceeding in the cause. 2 *R. S.* 434, 4th ed. 3 *Denio*, 85.

May be removed by three justices of the peace.] Upon complaint being made to three justices that any constable has collected money which he has neglected to pay over, and for which a recovery has been had against his sureties, they are required to

summon him to appear before them, to show cause why he should not be removed from office. The complaint being established, or if he refuses to appear, they must make an order removing him from office, assigning their reasons, and file the same in the town clerk's office. Upon the service of a certified copy of such instrument on the constable, his powers as such officer cease, and his office is deemed vacant.

May not act by deputy.] Constables may not act by deputy. Justices however may, in writing, authorise in a given case, any person of lawful age, to serve civil process, except a venire, and the person so authorised will possess all the authority of a constable in relation to the execution of such process. 2 R. S. 458, 4th ed.

Special proceedings.] Constables are required to serve such process as may be regularly directed to them in special proceedings, and for any wilful neglect in that regard, are liable to a fine of twenty-five dollars. They are also required to serve process under the highway act, bastardy laws and laws relating to beggars, disorderly persons, landlords and tenants, and militia laws.

When process may not be served.] Civil process may not be served on Sunday, nor on the day of a general or special election, nor town meeting.

Searching for goods, breaking open doors.] The constable cannot justify the breaking open of the outer door of the dwelling house of the defendant, in search either of his goods or the goods of his servants and lodgers, when the execution is against any of them. The house is a protection for them

all, but if the outer door be open he may if necessary break open an inner door even without first demanding admittance. 2 *Cow. Treatise*, 540, 3d ed. 17 *Johns*. 127.

SECTION 2. HIS DUTY UNDER THE LAWS RELATING TO
CRIMINAL PROCEEDINGS.

The powers of the constable are not all defined by statute, many of his duties are regulated by the common law.

Sir Francis Bacon in defining his powers as a peace officer uses the following language: "For the pacifying of a quarrel begun, the constable may upon hot words given, or likelihood of breach of the peace to ensue, command them to keep the peace, and depart, and forbear; and so he may when an affray is made part of the same, keep the parties asunder, and arrest and commit the breakers of the peace, if they will not obey, and call power to assist him for that purpose." *Lord Bacon's works*, vol. 3, 316.

These powers have lost none of their force by age. The constable should in such case apprise the parties of his official character.

The oath taken by the constable in those days was in the words following:

"You swear that you shall well and truly serve the king, and the lord of this law-day; and you shall cause the peace of our sovereign lord the king, well and truly to be kept to the best of your power, and you shall arrest all those that you see committing riots, and affrays in breach of the peace; and you shall well and truly endeavor yourself, to your best knowledge, to see that the

statutes made for the punishment of sturdy beggars, vagabonds, rogues, and other idle persons, coming within your office, be truly executed and the offenders punished, and you shall endeavor upon request made, to apprehend all riotous persons making affrays, and likewise to apprehend felons; and if any of them make resistance with force, and multitude of misdemeanors, you shall make outcry, and pursue them till they be taken; and shall look unto such persons as use unlawful games; and you shall well and truly execute all process and precepts sent unto you from the justices of the peace of the county; and you shall make good and faithful presentments of all bloodsheds, outcries, affrays, and rescues made within your office, and you shall well and truly according to your own power and knowledge, do that which belongeth to your office of constable to do, for this year to come. So help, &c.”

The oath taken by the constable at the present day involves all of the duties embraced in the above oath so far as they are applicable to our system of polity. While the constitutional oath does not define the duties of the officer in *terms*, yet it is implied that he will acquaint himself with the duties and obligations he assumes, so as to discharge them intelligently, and as the law requires.

It has been observed in the foregoing section, that the substance of the different kinds of process has been stated; this has been given because the rule in general holds good as well in civil as in criminal process, that in order to protect the officer, the process must be fair upon its face. Hence

it is necessary that the officer should be apprised of the rules which govern in determining whether the process is "fair on its face."

Warrant.] Mr. Barbour in his excellent treatise gives the following as the requisites of a warrant:

1. It should show the county where it was made, either in the body of the warrant or in the margin.

2. It should set forth the year and day wherein it was issued.

3. It may be either in the name of the justice himself or in the name of the people. (Better to have it in the name of the people.)

4. It must be under the hand of the justice or magistrate who issues it. 1 *Chit. Cr. L.* 38.

5. In this state it need not be under seal.

6. It should not be general to apprehend all persons suspected, but should direct the officer to apprehend some particular individual, otherwise it will be void. 4 *Black. Com.* 291.

7. The name of the person to be apprehended should be accurately stated if known, and must not be left blank to be filled up afterwards. 1 *Chitty Crim. Law*, 39.

8. The warrant must recite the accusation made by the complainant. The statute requires this. 2 *R. S.* 890, 4th ed.

9. The warrant must be properly directed, that is to say, a warrant not directed to any particular person in office is bad; the officer need not be named, but should be directed generally to any constable or sheriff of the county. *Barbour Cr. L.* 524, 526.

It has been seen in the next preceding section,

that a constable may arrest, without warrant, where he sees persons actually committing a felony, or committing a breach of the peace ; but because he may arrest such persons, in the act, without a warrant, it does not follow that he would have a right, after the affray is ended and he has allowed them to depart without making the arrest, to afterwards arrest without a warrant. The better opinion seems to be that he would not. 1 *East P. C.*, 305. *Roscoe Cr. L.* 691. In making arrests, the officer must detain the accused only for a sufficient reasonable time to convey him before a magistrate. The officer has no right after the arrest, to lock up the accused and go about his business, until his own inclination or caprice prompts him to take the party before the magistrate.

Felonies.] The term felony is construed by statute to mean an offence for which the offender, on conviction, shall be liable to be punished by death or by imprisonment in a state prison. 2 *R. S.* 886, 4th ed.

Among the offences called felonies, are treason, murder, arson, manslaughter, rape, kidnapping, burglary, forgery, counterfeiting, perjury, subornation of perjury, embezzlement, false pretences, grand larceny, bribery, incest, bigamy, fighting or challenging to fight a duel, maliciously injuring railroads, aiding prisoners to escape, breaking jails, maiming, carrying or having in possession slung shot.

The above list does not embrace all offences denominated felonies, it includes the principal part however.

Arrests, and who may be arrested.] An arrest is the apprehending of a person, that he may be forthcoming to answer for any crime or alleged crime with which he may stand charged. 4 *Black. Com.* 289.

All persons are liable to arrest from the highest functionary in the government to the humblest citizen. The rule that prevails in civil cases, excepting persons under certain circumstances from arrest, does not apply in criminal proceedings.

When and where the arrest may be made.] An arrest may be made at any time, either day or night, and on any day of the week, and at any place. No place can afford protection to a person who has violated the criminal law. *Barb. C. L.* 530.

Mode of arrest.] The party must be actually touched by the officer, or confined in a room, or submit himself by words or actions to be in custody. *Id.*

Officer should state his authority.] Either before or at the moment of arrest, the officer should make known in some form that he comes in his official capacity, and not in that of a mere wrong-doer. *Bellows v. Shannon*, 2 *Hill*, 86.

The officer is not obliged to show his warrant, (1 *Chit. Cr. L.* 50,) but after the party has submitted to the arrest, the officer, if requested, is bound to inform the accused of the *substance* of the warrant. 2 *Hill*, 87. 8 *Term Rep.* 187.

May command assistance.] The officer has the right to command assistance in making the arrest. Wilful disobedience to such commands is declared to be a misdemeanor, punished by fine and im-

prisonment, and also punishable as a contempt of the court issuing the process. 2. *R. S.* 684, 4th ed.

If the officer has authority to do the act, for the doing of which aid is required, the by-stander is bound to obey, and is justified; on the contrary, if the officer has no authority to do the act, the by-stander is not bound to obey, and if he yields obedience, is a trespasser. *Elden v. Morrison*, 10 *Wend.* 128.

In case of resistance.] While the officer is bound to use caution and forbearance, yet he has the power in case of resistance to use such force as may be requisite to overcome the resistance and effect the arrest. 1 *Hall*, 479. *Barb. Cr. L.* 536.

Conveying the prisoner before the magistrate.] The officer should after the arrest convey the accused before the magistrate with all reasonable diligence.

Return of warrant.] The accused having been brought before the magistrate, the officer is required to endorse his return upon the warrant and sign it. 2 *R. S.* 590, 2d ed.

The form of the return may be as follows:

“The defendant arrested and now in court, and the complainant notified.”

Aug. 20th, 1855.

A. B., *Const.*

The defendant having been arrested and conveyed before the magistrate, is either tried (if a proper case to be tried,) before a court of special sessions, or is *examined* touching the accusation alleged against him. If not discharged and no bail is given, the magistrate commits.

Commitment, what to contain.] The commitment must be in writing under the hand and seal of the

magistrate, and must show the time and place of making it. It should be in the name of the people, and directed to the sheriff or any constable, and to the jailor and keeper of the prison, directing such officer to convey the party to prison, describing the accused by name, if known, and stating that the party has been charged on oath, and setting forth the particular species of crime alleged against the accused with reasonable certainty; and it should point out the place of imprisonment and the time and mode of the same. *Barb. Crim. Law*, 572.

Duty serving commitment.] The constable with the warrant of commitment, conveys the accused to jail, and delivers him over together with the commitment to the jailor, that being the authority of the jailor for detaining the accused.

Search warrants.] Search warrants should distinctly specify the place to be searched, (*Bill of Rights*, 1 R. S. 302, 4th ed.) and the goods to be seized; if these essential requisites are omitted, the officer had better let it alone. If upon the execution of a search warrant, fair on its face, the officer finds property alleged to be stolen, he must take the goods immediately before the magistrate who issued the warrant. Upon examination of the matter, should it appear that the goods were not stolen, they are to be returned to the possessor, and if they were stolen, they are to be delivered to the owner on his paying the expenses. *Barb. Crim. Law*, 502.

Constables to attend court, duty in that respect.] The sheriff of the county in which any term of the court of appeals, or of the supreme court may be held, is required before the commencement of the term, to

summon two constables to attend the same. The constables must attend, keep the court room in order, and act as criers of the court during its sitting. 2 R. S. 363, 4th ed.

Other courts.] Constables are required to attend, when summoned by the sheriff, to the sittings of the circuit courts, oyer and terminer, county courts and sessions, and where required must do the duties of crier. 2 R. S. 476, 4th ed.

Compensation under insolvent laws.] The constable when required to summon a jury under the law relating to insolvent debtors, is entitled to receive for summoning a jury in such cases, the sum of one dollar and twelve and a half cents, to be paid by the creditors. 2 R. S. 216, 4th ed.

Rewards to constables forbidden.] No constable is allowed to ask or receive any money or valuable thing from a defendant, or any other person, as a consideration, reward or inducement, for omitting to arrest any defendant, or to carry him before any justice; or for delaying to take any party to prison; or for postponing the sale of any property, under an execution; or for omitting or delaying the execution of any duty pertaining to his office.

Buying securities, &c., for prosecution.] No justice of the peace or constable is allowed to directly or indirectly, buy, or be interested in buying any bond, note or other demand, or cause of action, for the purpose of commencing any suit thereon, before a justice; nor may any justice or constable, either before or after suit brought, lend or advance, or agree to lend or advance, or procure to be lent or advanced, any money, or other valuable thing,

to any person, in consideration of, or as a reward for, or inducement to the placing or having placed in the hands of such justice or constable, any debt, demand or cause of action whatever, for prosecution or collection.

Penalty.] Every justice or constable offending against either of the two last provisions will be deemed guilty of a misdemeanor, and on conviction, will be subject to fine or imprisonment, or both, in the discretion of the court. Every such conviction will operate as a forfeiture of the office of the justice or constable, so convicted. 2 R. S. 194, 2d ed.

Consequence of neglecting duty.] It is provided by statute as follows :

If any sheriff, jailor, coroner, marshal, or constable, shall,

1. Wilfully and corruptly refuse to execute any lawful process directed to them, or any of them, requiring the apprehension or confinement of any person charged with a criminal offence : or

2. Shall corruptly and wilfully omit to execute such process, by which such person shall escape : or

3. Shall wilfully refuse to receive in any jail under his charge, any offender lawfully committed to such jail, and ordered to be confined therein, on any criminal charge or conviction, or on any lawful process whatever : or

4. Shall wilfully suffer any offender lawfully committed to his custody, to escape and go at large : or

5. Shall receive any gratuity or reward, or any

security or engagement for the same, to procure, assist, connive at, or permit any prisoner in his custody, on any civil process, or any criminal charge or conviction to escape; whether such escape be attempted or effected, or not; he shall upon conviction, be punished by imprisonment in a county jail not exceeding one year, or by fine not exceeding one thousand dollars, or by both such fine and imprisonment.

Every sheriff, coroner, marshal or constable, who may be convicted of any offence specified above, forfeits his office, and will be forever disqualified to hold any office or place of trust, honor or profit under the laws or constitution of this State. 2 R. S. 570, 2d ed.

Accounts.] In preparing his accounts to present to the board of supervisors, for his services in criminal cases, he should state the place where the offence was committed, and give the name of the justice issuing the warrant in each criminal case with which he has to do, and the nature of the offence as named in the warrant. (*Form of preparing account, Appendix, No. 219.*)

Fees in civil cases.] For serving a warrant or summons, twelve and a half cents.

For a copy of every summons delivered on request, or left at the dwelling of the defendant in his absence, nine cents.

Serving an attachment, fifty cents; for a copy thereof, and of the inventory of the property seized, left at the last residence of the defendant, fifty cents.

Serving an execution, or levying a fine or pen-

alty pursuant to a warrant, five cents for every dollar collected, to the amount of fifty dollars; and two and a half cents for every dollar collected over fifty dollars.

For every mile, going only, more than one mile, when serving a summons, warrant, attachment or execution, six cents; to be computed from the place of abode of the defendant, or where he shall be found, to the place where the precept is returnable.

For notifying the plaintiff of the service of a warrant, twelve and a half cents; and for going to the plaintiff's residence, or where such notice was served, six cents for every mile more than one.

For summoning a jury, fifty cents.

Serving a subpoena, twelve and a half cents for each witness served; but no allowance will be made for service upon more than four witnesses in any one cause.

Fees in special proceedings in civil cases.] Serving a summons, twelve and a half cents; serving a warrant nineteen cents; mileage, for going only, six cents for each mile.

For advertising and selling any property distrained doing damage; or levying a fine, penalty, or sum, pursuant to a warrant, the same fees as are allowed on executions from justices' courts.

Arresting and committing any person, pursuant to process, fifty cents; and mileage, for going only, six cents.

Attending any court pursuant to a notice from the sheriff, one dollar and fifty cents a day in the city of New-York, and one dollar and twenty-five

cents a day in each of the other counties of this State; which fees are chargeable to the county, and are to be paid by the treasurer thereof, on the production of the certificate of the clerk, specifying the number of days each constable has attended.

Summoning a jury under the provisions of the Revised Statutes relative to insolvents, one dollar and twelve and a half cents, to be paid by the creditors requiring the jury.

For any services not specially provided for, which may be rendered by a constable, the same fees as are allowed by law to sheriffs, for similar services.

Fees in criminal cases.] Serving a warrant or other process, for the arrest of any person, fifty cents; and the same fees for mileage as are allowed on warrants in civil cases.

Taking a defendant in custody on a mittimus, twelve and a half cents.

Conveying a person to the magistrate or court before whom he is to be brought, or to jail, twelve and a half cents, if within one mile, and for every other mile more than one, going only, six cents.

Serving a subpœna, twelve and a half cents for each witness, and the same mileage as above provided, but mileage is allowed only for the distance actually and necessarily travelled.

For other services in criminal cases, for which no compensation is specially provided by law, such sum as the board of supervisors of the county shall allow.

For summoning a jury to re-assess the damages incurred by laying out, altering or discontinuing

a road, if from the same town, one dollar; if otherwise, two dollars.

Serving a summons in the city of Albany on one defendant, and notifying plaintiff of the trial, thirty-seven and a half cents; serving summons on every other defendant named in the same summons, twenty-five cents; serving a warrant in a civil suit in the same city, on one defendant, and notifying plaintiff, fifty cents; for service on every additional defendant named in the same warrant, thirty-seven and a half cents.

CHAPTER XII.

OF COUNTY AND TOWN SEALERS.

The county sealer is appointed by the board of supervisors at their annual meeting. He holds his office during the pleasure of the board.

His duty.] It is the duty of the county sealer to take charge of the county standards and standard balances, and provide for their safe keeping, and to provide the towns with such standard weights and measures and standard balances as may be wanting, and to compare the town standards with those in his possession as often as once in every five years. 2 R. S. 4, 4th ed.

Town sealers.] The town sealer is now appointed by the supervisor and justices of the peace of the town, and holds his office during their pleasure.

His duty.] It is the duty of the town sealer to take charge and provide for the safe keeping of the town standards, and to see that the weights, meas-

ures and all apparatus used for determining the quantity of commodities used throughout the town, which may be brought to him for that purpose, agree with the standards in his possession.

Weights and measures.] The standard weights and measures now in charge of the secretary of state, being the same that were furnished to this State by the government of the United States, in accordance with a joint resolution of Congress, approved June 14, 1836, and consisting of one standard yard measure, one set of standard weights, comprising one Troy pound, and nine Avoirdupois weights of one, two, three, four, five, ten, twenty, twenty-five and fifty pounds respectively; one set of standard Troy ounce weights, divided decimally from ten ounces to the one ten thousandth of an ounce; one set of standard liquid capacity measures, consisting of one wine gallon of two hundred and thirty-one cubic inches, one half gallon, one quart, one pint and one half pint measure, and one standard half-bushel, containing one thousand and seventy-five cubic inches and twenty-one hundredths of a cubic inch, according to the inch hereby adopted as standard, are the standards of weight and measures throughout this state.

The unit.] The unit or standard measure of length and surface from which all other measures of extension, whether they be lineal, superficial or solid, shall be derived and ascertained, is designated the standard yard.

The yard.] The yard shall be divided into three equal parts called feet, and each foot into twelve equal parts called inches; for measures of cloth

and other commodities commonly sold by the yard, it may be divided into halves, quarters, eighths and sixteenths.

The rod.] The rod, pole or perch contains five and a half such yards; and the mile, one thousand seven hundred and sixty such yards; the chain for measuring land, is twenty-two yards long, and is divided into one hundred equal parts called links.

The acre.] The acre, for land measure, is measured horizontally, and contains ten square chains, and is equivalent in area, to a rectangle sixteen rods in length and ten in breadth; six hundred and forty such acres being contained in a square mile.

Weights.] The units or standards of weight from which all other weights shall be derived and ascertained, are the standard Avoirdupois and Troy weights designated above.

The pound.] The Avoirdupois pound, which bears to the Troy pound the ratio of seven thousand to five thousand seven hundred and sixty, is divided into sixteen equal parts called ounces; the hundred weight consists of one hundred Avoirdupois pounds, and twenty hundred weight constitutes a ton. The Troy ounce is equal to the twelfth part of the Troy pound.

The gallon.] The units or standards of measure of capacity for liquids, from which all other measures of liquids shall be derived and ascertained, are the standard gallon and its parts, designated above.

The barrel.] The barrel is equal to thirty-one and a half gallons, and two barrels constitute a hogshead.

Half bushel.] The unit or standard measure of capacity for substances not being liquids, from which all other measures of such substances shall be derived and ascertained, is the standard half-bushel mentioned above.

The peck, &c.] The peck, half peck, quarter peck, quart and pint measures, for measuring commodities which are not liquid, are to be derived from the half bushel, by successively dividing that measure by two.

Measures of coal, ashes, &c.] The measures of capacity for coal, ashes, marl, manure, Indian corn in the ear, fruit and roots of every kind, and for all other commodities, commonly sold by heap measure, are the half bushel and its multiples and subdivisions; and the measures used to measure such commodities must be made cylindrical, with plain and even bottom, and of the following diameters: from outside to outside the bushel, nineteen and a half inches; half bushel, fifteen and a half inches; and the peck, twelve and a third inches.

Heap measure.] All commodities sold by heap measure must be duly heaped up in the form of a cone; the outside of the measure by which the same shall be measured to be the limit of the base of the cone, and such cone to be as high as the article will admit.

Contracts how construed.] All contracts made within this State for work to be done, or for any thing to be sold or delivered by weight or measure, must be taken and construed according to the standards of weight and measure hereby adopted as the standards of this State.

Number of pounds to the bushel.] Whenever wheat, rye, Indian corn, barley or oats, are sold by the bushel, and no special agreement is made by the parties as to the mode of measuring, the bushel shall consist of sixty pounds of wheat, fifty-six pounds of rye or Indian corn, forty-eight pounds of barley, and thirty-two pounds of oats.

Superintendent.] A superintendent of weights and measures for this State, who is required to be a scientific man, of sufficient learning and mechanical tact to perform the duties of his office, is appointed by the governor, lieutenant governor and secretary of state, or any two of them, at a meeting called for this purpose by the secretary of state, and he holds his office during their pleasure.

It is the duty of the superintendent to take charge of the standards adopted as the standards of the State; to see that they are deposited in a fire-proof building belonging to the State, from which they shall in no case be removed, and to take all other necessary precautions for their safe keeping. It is also his duty to correct the standards of the several cities and counties, and provide them with such standards, balances and other means of adjustment, as may be necessary; and as often as once in ten years, to compare the same with those in his possession: he moreover, has a general supervision of the weights and measures of the State.

Copies of standard weights and measures.] The state superintendent of weights and measures must procure for the State, a complete set of copies of the original standards of weights and measures adopt-

ed by the State, which must be used for adjusting county standards, and in no case can the original standards be used for any other purpose than the adjustment of this set of copies, and for scientific purposes; he must also procure such apparatus and fixtures as are necessary in the comparison and adjustment of the county standards.

Copies of standards for counties.] The supervisors of each county are required to provide for procuring the proper standards of weights and measures for their respective counties, and for each of the towns therein; and all expenses directly incurred in furnishing the several cities, counties and towns with standards, or in comparing and adjusting those already in their possession, must be borne by the respective cities, counties and towns for which such expenses shall have been incurred.

Devices for weights and measures.] The state superintendent of weights and measures must see that there are impressed on all the city and county standards the emblem of the United States, the letters N. Y., and such other device as he may direct for the particular county; and the county sealers must see that in addition to the above device there is impressed on the town standards such other device as the board of supervisors shall direct for the several towns.

Weights and measures to be marked.] Whenever the several sealers of the cities, counties and towns, compare weights and measures and find or make them to correspond with the standards in their possession, they must seal and mark such weights and measures with the appropriate devices.

Fees.] Each sealer is entitled to receive for his services, at and after the following rates:

For sealing and marking every beam, ten cents;

For sealing and marking measures of extension, at the rate of ten cents per yard, not to exceed fifty cents for any one measure ;

For sealing and marking every weight, five cents;

For sealing and marking liquid and dry measures, ten cents for each measure. He is also entitled to a reasonable compensation for making weights and measures conform to the standards in his possession.

In case of vacancies, standards to be delivered to successors in office.] Whenever any city, county, or town sealer shall resign, or be removed from office, or remove from the city, county, or town in which he shall have been appointed or elected, it is the duty of the person so resigning, removed, or removing, to deliver to his successor in office all the standard beams, weights, and measures in his possession.

Same in case of death.] In case of the death of any such sealer of weights and measures, his representative must in like manner deliver to his successor in office, such beams, weights, and measures.

Penalty for refusal. In case of refusal or neglect to deliver such standards, entire and complete, the successor in office may maintain an action against the person or persons so refusing or neglecting, and recover double the value of such standards as shall not have been delivered. And in every such

action in which judgment shall be rendered for the plaintiff, he will recover double costs.

Damages how disposed of.] One-half of the damages recovered in every such action, may be retained by the person so recovering, and the other must be applied to the purchase of such standards as may be required in his office.

Penalty for using false weights and measures.] Any person who shall use any weights, measures, beams, or other apparatus, for determining quantity of commodities, which shall not be conformable to the standards of this State, whereby any person shall be injured or defrauded, will be subject to a fine not exceeding five dollars for each offence, to be sued for and collected by the city or town sealer; he will also be subject to an action at law, in which the defrauded person will recover treble damages and costs; and it is the duty of every person keeping any store, grocery or other place, for the sale or purchase of such commodities as are usually sold by weight or measure, once in each year to procure the weights and measures used by him to be compared with the standard above mentioned, and will be subject to a fine of five dollars for every neglect to comply with this provision, to be recovered by any one who may prosecute therefor.

Surveyor's testimony.] No surveyor is allowed to give evidence in any cause pending in any of the courts of the State, or before arbitrators, respecting the survey or measurements of lands which he may have made, unless such surveyor shall make oath, if required, that the chain or measure used

by him was conformable to the standards which were the standards of the State, at the time such survey was made. 2 *R. S.* 6, 4th ed.

CHAPTER XIII.

OF THE BOARD OF TOWN AUDITORS.

The board of town auditors is composed of the supervisor, town clerk and justices of the peace of the town, or any two of the justices of the peace; that is to say, should all the justices of the town and the supervisor and town clerk meet to compose the board of town auditors, those officers would constitute the board; should but two of the justices meet with the supervisor and town clerk, the board would be deemed sufficiently full for the transaction of business. This board was created for the purpose of auditing and allowing the accounts of all charges and claims payable by their respective towns.

When to meet.] This board are required to meet annually, for the purpose above stated, at the place of holding the last annual town meeting in their town, on the last Thursday preceding the annual meeting of the board of supervisors of the county. 1 *R. S.* 663, 4th ed. *Laws of 1844, chap.* 228.

The clerk of the board of supervisors usually sends a notice to the supervisor of each town, informing him of the day of the annual meeting of the board, and encloses a blank for the use of the auditors, to be filled up by them. It would be

well for some member of the board of town auditors, at least ten days before they meet, to put up or publish notice of the time and place of their meeting. Such notices would give persons having business to transact before the board, time to prepare and verify their claims and would tend to facilitate their labors.

What claims they may audit.] As before stated, the claims to be audited by the board of auditors of town accounts, consist of charges payable by their respective towns. These are the charges of town officers, *and others*, for services rendered for their respective towns, among which would be,

1st. The charges which a supervisor may have for prosecuting or defending suits in his official capacity, and for procuring the survey of the bounds of his town, (*see page 4,*) and for procuring the survey of non-resident lands, (*see page 5,*) and for attending town meeting, the board of excise and board of auditors, making list of jurors, and for rendering any other service the charge for which would be payable by his town.

2d. The charges of the town clerk for his services in keeping the records of the town, making out road warrants, entering orders of highway commissioners, transcribing papers, acting as clerk for the town superintendent, (*see page 102,*) filing papers, attending town meetings and board of auditors, and discharging such other duties as are required by law, (*page 98,*) the compensation for which would be a town charge.

3d. The charges of justices of the peace for at-

tending town meetings, attending the board of town auditors, boards of excise, attending meetings to appoint town officers, discharging the duties enjoined on them by the poor laws, except for services rendered for county paupers, which must be audited by the superintendents of the poor. *Page 188.* (The auditors have nothing to do with the charges of justices in criminal proceedings.)

4th. The accounts of assessors, for their *per diem* in making their assessments.

5th. The charges of overseers of the poor for their *per diem* allowance in performing their duty in regard to the relief and support of the poor, in regard to bastards, disorderly persons, jugglers, and any other duty required of them by law. (Their accounts for moneys received and disbursed are adjusted at another time, hereinafter mentioned.)

6th. The charges of commissioners of highways for their *per diem* allowance, in the discharge of their duty. (Auditors at this meeting having nothing to do with the accounts of the commissioners for the disbursement of public money.)

7th. The charges of the town superintendent for his services in examining the qualification of teachers, visiting schools, attending and regulating districts, apportioning school moneys, and for performing any other duty which may properly be denominated a town charge.

8th. The claims of inspectors of election for their services in attending elections.

9th. Such other claims as are properly a town charge.

Town charges defined.] The following are deemed town charges.

1st. The compensation of town officers for services rendered for their respective towns:

2d. The contingent expenses necessarily incurred for the use and benefit of the town:

3d. The moneys authorised to be raised by the vote of a town meeting for any town purpose:

4th. Every sum directed by law to be raised for any town purpose. 1 *R. S.* 358; *p.* 351, 2 *ed.*

Accounts for the *compensation* of town officers, and the contingent expenses of towns, after being audited by the board of town auditors as above mentioned, must be presented to the board of supervisors. 1 *R. S.* 356; *p.* 351, 2 *ed.*

To make certificates.] The board must make a certificate to be signed by a majority of the board, specifying the name of the person in whose name the account is drawn, the nature of the demand, and the amount allowed; and must cause a duplicate of such certificate to be made, one of which must be delivered to the town clerk of said town, to be by him kept on file for the inspection of any of the inhabitants of the town, and the other must be delivered to the supervisor of the town, to be by him laid before the board of supervisors of his county at their annual meeting. *Laws of 1840, p.* 251. From the 24th section of chap. 455 of the Laws of 1847, it would seem that a copy of this abstract must also be forwarded to the clerk of the board of supervisors.

Accounts for moneys received and disbursed by

town officers, are presented to the town auditors at another day hereinafter mentioned.*

Settlement day.] There is a meeting of the board of auditors, besides the *annual* meeting, above provided for on the Thursday preceding the meeting of the board of supervisors, which I have denominated settlement day; which meeting must be held on the Tuesday preceding the annual town meeting. The duty of the auditors at this meeting consists in receiving the accounts of overseers of the poor, (*see page 186,*) and comparing the same with the entries in the poor books, examining the vouchers in support of the same, auditing and settling the accounts and stating the balance due to or from the overseer. 1 *R. S.* 626; *p.* 635, *2d ed.*

It is also their duty at this meeting, to receive the accounts of commissioners of highways, (*see page 233,*) for adjustment and settlement. They must also at this time examine the accounts of the town superintendents of schools, (*see page 285,*) to see that the same are correctly kept, and that the school moneys are properly disbursed. 1 *R. S.* 888, *4th ed.*

The auditors at this time will also receive the accounts of the supervisor of their town. The supervisor will there, at that meeting, account with the justices and town clerk for the disbursement

* At page 283, the meeting of this board is spoken of as an *annual* meeting, because the term is so used in the statute. The annual meeting *proper* is the meeting now provided for on the Thursday preceding the meeting of the board of supervisors, and for the purpose of avoiding confusion in the use of terms, I have in this chapter, called the second meeting of the board, being the one alluded to at page 283, "settlement day."

of all moneys received by him. 1 R. S. 584, 4th ed. See page 4.*

Majority may act.] When the board is regularly formed, a majority may act, although the supervisor or any other member dissents. 1 Hill, 195.

Their certificate need not be signed with their official additions, if it purport to be made by the board of town auditors it is enough; nor need it in terms state that they meet at the place prescribed by law. *Id.*

Verification.] The auditors are not allowed to audit any account, unless the same is made out in items, accompanied with an affidavit attached to and to be filed with the account, made by the person presenting or claiming the same, that the items of such account are correct, and that the disbursements and services charged therein have been in fact made or rendered, or necessary to be made and rendered, at the session of the board at which it is presented, and that no part thereof has been paid or satisfied. (*Form of affidavit, Appendix, No. 220.*) *Laws of 1844, chap. 490.* 1 R. S. 664,

* A remark of the editor's occurs in a note at page 663, 1 Revised Statutes, 4th ed., to the effect that the entire article of the Revised Statutes relating to auditors of town accounts is superceded by the first three sections of the act of 1850, which remark, it is respectfully suggested, should be taken with some qualification. The law of 1850 provides in *terms* for the annual meeting of the auditors on the Thursday preceding the annual meeting of the board of supervisors, and says nothing about any other meeting. But that act does not profess to repeal, nor supercede the provisions of the Revised Statutes which require overseers of the poor, (1 R. S. 626, 635, 2d ed.,) and commissioners of highways, (1 R. S. 500, 2d ed.,) to render their accounts to the auditors for settlement, hence, although a meeting is not expressly directed in terms to be held on the Tuesday preceding the town meeting, yet such a meeting is necessarily implied in order to give effect to the statute, besides this meeting is as indispensable and necessary as the annual meeting provided for by the act of 1850.

4th ed. The affidavit above mentioned is not to be construed to prevent the board from disallowing an account in whole or part. The board, if they think proper, may require further evidence of the truth and propriety of the accounts in addition to the affidavit. 1 R. S. 664, *4th ed.*

CHAPTER XIV.

OF BOARDS OF HEALTH.

Boards of health in cities are appointed by the common council, and in incorporated villages by the trustees thereof. When thus appointed, the board must consist of not less than three nor more than seven persons, besides a physician who receives his appointment from the same source, and is denominated the health officer for such board. Boards of health are appointed annually. *Laws of 1850, chap. 324.* 1 R. S. 852, *4th ed.*

Boards of health in towns.] The supervisor and justices of the peace, or the major part of them, of each town, constitute the board of health for such town each year. When a majority of those officers are of the opinion that the public good requires it, they may appoint some competent physician to be the health officer of such town.

Powers and duties.] They are required to meet in their respective cities, villages and towns, and fix and determine the period of quarantine to which vessels, vehicles, or persons arriving in such city, village or town, shall be subject; the board have power after an examination, to reduce the period

of quarantine of such vessel, vehicles or persons, if they deem it safe so to do.

To prescribe the duties and powers of the health officer; to direct him from time to time in the performance thereof, and to fix his compensation.

To make regulations in their discretion, concerning the place and mode of quarantine; the examination and purification of vessels, boats and other craft, not under quarantine; the treatment of vessels, articles or persons thereof; the regulation of intercourse with infected places; the apprehension, separation and treatment of emigrants and other persons who may have been exposed to any infectious or contagious disease; the suppression and removal of nuisances; and all such other regulations as they shall think necessary and proper for the preservation of the public health.

To regulate and prohibit or prevent all communication or intercourse by and with all houses, tenements and places, and persons occupying the same, in which there shall be any person who may have been exposed to any infectious or contagious disease.

To procure suitable places for the reception of persons under quarantine, and persons sick with the Asiatic or malignant cholera, or any other malignant, infectious or contagious disease; and in all cases where sick persons cannot otherwise be provided for, to procure for them proper medical and other attendance and necessities.

To publish from time to time all such regulations as they shall have made, in such manner as to secure early and full publicity thereto.

To issue warrants to any constable of their respective cities, villages or towns, to apprehend and to remove such persons as cannot otherwise be subjected to the regulations by them adopted, and whenever it becomes necessary to do so, to issue their warrant to the sheriff of their respective counties, to bring to their aid the power of the county; all which warrants must be forthwith executed by the officers to whom they are directed, who will possess the like powers, and be subject to the like duties in the execution thereof, as if the same had been duly issued out of any court of record in this State.

To employ all such persons as may be necessary to enable them to carry into effect the regulations they shall have adopted and published, and the powers vested in them by law, and to fix their compensation. Every person who wilfully violates any regulation so made and published by any such board of health, will be deemed guilty of a misdemeanor, and on conviction thereof will be subject to fine or imprisonment, or both, at the discretion of the court, such fine not exceeding one thousand dollars, nor such imprisonment two years. 1 R. S. 853, 4th ed. *Laws of 1850, chap. 324, p. 690.*

To provide rooms for the sick.] Should a pestilence or a contagious disease prevail in a poor house or its vicinity, provision is made by law for the removal of persons supported at such poor house; and in such case it becomes the duty of the board of health of the city or town within which such poor house may be located, to designate some situa-

ble place in the same county where such persons may be provided for, until they can be safely returned to the county poor house, or discharged. 1 *R. S.* 853, 4th ed. *Laws of 1850*, p. 692.

Counties excepted.] The regulations above mentioned for the formation of boards of health, do not apply to the city and county of New-York, nor the city of Brooklyn. For the regulations in this respect in the city of Brooklyn, see 1 *R. S.* 849, 4th ed., and for the city of New-York, 1 *R. S.* 816.

Power relating to nuisances.] In cities, power is usually conferred upon the common council, in express terms, to abate nuisances; hence boards of health in cities, usually do no more in that direction than to report such nuisances as they may deem to exist, to the common council, to be disposed of by that tribunal; but in villages and towns the power above conferred upon boards of health to *suppress* and *remove* nuisances, was given for wise and beneficent purposes.

Notwithstanding a public nuisance may be abated by any one at common law, (3 *Paige*, 213,) it is prudent, in order to prevent any disturbance of the public peace and with a view also to insure attention to such matters, that some public body, or public officer should be designated, whose special duty it is to guard the public health against the inroads of disease, and protect the community against whatever may render the enjoyment of life and property uncomfortable. But in the discharge of their duty, they should be careful and not transcend their powers. Such bodies must show a

grant either in express terms or by necessary implication for all the power and authority they undertake to exercise. *Sharp v. Spear*, 4 *Hill*, 83. *City of Rochester v. Collins*, 12 *Barb.* 526.

In the case of *Van Wormer v. The city of Albany*, Chief Justice Savage remarks, that it is right that the power to suppress and remove nuisances should exist some where, to be exercised upon a proper emergency. If the civil authorities were obliged to await the slow progress of a public prosecution the evil arising from nuisances would seldom be avoided. 15 *Wend.* 264. In construing a statute in that case, containing a clause precisely like the clause in the statute above cited relating to nuisances now in force, the same judge remarks. "It cannot be doubted, I think, that the statute gives a summary remedy to remove or abate nuisances."

Nuisance defined.] A nuisance is defined to be any thing that annoys, incommodes, and offends; any thing that renders the enjoyment of life uncomfortable. *Burrill's Law Dic.* 760. 5 *Hill*, 12.

A common nuisance is defined to be one that affects the public, being an annoyance to the whole community in general; as distinguished from a private nuisance, which is confined in its effects to particular individuals. *Burrill's Law Dic.* 244. 4th *Steph. Com.* 294.

A business need not be unhealthy to be a nuisance, it is sufficient if it be offensive to the senses, and if it renders life uncomfortable. *Howard v.*

Lee, 3 *Sandford Sup. C. Rep.* 281. *Brady v. Weeck*, 3 *Barb.* 157.

A person sick with an infectious or contagious disease in his own house, or in suitable apartments at a public hotel or boarding house, is not in contemplation of law, deemed a nuisance. *Boom v. City of Utica*, 2 *Barb.* 104.

Among other offensive things that have been declared nuisances, it has been decided that a dwelling house cut up into small apartments, inhabited by a crowd of poor people, in a filthy condition, and calculated to breed disease, is a *public nuisance*, and may be abated by persons residing in the neighborhood by tearing it down, especially during the prevalence of the Asiatic cholera. *Meeker v. Van Rensselaer*, 15 *Wend.* 397.

Boards should make a record of their proceedings.] Such boards are clothed with large discretionary power. Their decision upon matters within their jurisdiction is in the nature of a judicial sentence or decree, and hence should be in writing. Their determinations frequently very seriously affect the rights and property of individuals, and it is as important that their proceedings should be made a matter of record, as it is that courts should preserve a record of their proceedings. 15 *Wend.* 399.

Accounts.] Prior to 1854, the *expenses* incurred by the several boards of health, however large, were a county charge. The compensation for their services was a town charge. By the statute of 1854, chap. 169, p. 359, the law is materially amended in that respect. The fifth section of the act of 1850

is so amended, that provision is now made for the payment of the expenses incurred by such boards in the discharge of their duty, as a *county charge* to the amount of three hundred dollars and no more, and all such expenses exceeding the sum of three hundred dollars, must be charged, levied, and collected upon the town, city or village where such expenses have been made. (*See definition of county charges, ante, page 24.*)

It will be observed that in the fifth section of the act of 1854 above mentioned, nothing is said about the compensation of the members of the board, for their individual services, being a town, village or city charge; it would *seem*, therefore, that *all* charges, whether for the compensation of the members of the board for their labors, or for the expenditures by them made, within the sum of three hundred dollars should be audited as a *county charge*, and all sums above that amount as a village, city or town charge. There is, however, a variety of opinion by different boards in regard to the true construction of that section, and until it undergoes *judicial* construction, the law in that respect cannot be considered as settled.

The items of their account must be made out and verified in the same manner as the charges of other officers. (*Form of verification, Appendix, No. 220.*)

The law with regard to the adjustment of the claims of boards of health, is so fully stated in the opinion of Justice Johnson in the case of the board of health of the city of Rochester v. The Board of

Supervisors of the county of Monroe, 18 *Barb.* 567, that it has been deemed proper to give the substance of that case. It was a motion for a mandamus to compel the board of supervisors of the county of Monroe, to audit and allow the expenses incurred by the board of health in the year 1853. The motion was heard at the general term, in June, 1854, upon the affidavits on which the application was made, and the return thereto. The claim presented for allowance amounted to between four and five thousand dollars. On the part of the board of health it was shown that the claim for the expenses was presented to the board of supervisors, at their annual meeting next after the expenses had been incurred, and that they refused to audit or allow the same, or to recognize them as proper claims against the county. The return of the supervisors contained copies of the claims presented, and alleged that the claims were presented in behalf of, and as belonging to the city of Rochester, and that they were not verified in any way, except by the affidavit of H. S., who was styled "Auditor of the board of health." This affidavit was annexed, and merely showed that the accounts presented contained a true statement of the individuals whose accounts were allowed, and that he drew orders for the amount set opposite each name, respectively, upon the city treasurer, who paid the same. There was nothing to show what kind or amount of services had been rendered by the persons thus paid, or what their claims consisted of. No items were given, but the gross amount paid to each, only. One charge in the ac-

count was "For the purchase of West Spring St. hospital, \$900." These facts were not denied by the board of health.

By the Court, Johnson, P. J. "Whatever may have been the duty of the board of supervisors, in regard to allowing the accounts as presented, as a charge against the county of Monroe, it is quite clear, I think, that this proceeding cannot be maintained by the board of health. They have no title to the relief demanded, and no interest whatever in the allowance of the accounts, or any of them, as a charge upon the county. Their compensation is chargeable upon the city, and they have no interest in the allowance or the payment of the claims of others. They are not responsible for those claims, whether they are allowed or rejected. Besides, I am of opinion that boards of health, as constituted by statute, have not the capacity to sue or be sued.

"It may be, and I am inclined to the opinion that they are *quasi* corporations invested with corporate powers, *sub modo*, for specified purposes, like overseers of the poor of a town. But they are not authorized to sue by any statute, and I am unable to perceive that the existence of any such power is necessary to enable them to exercise fully the powers and duties with which they are specially charged. It is a general principle that corporations, being the mere creature of the law, possess only those properties which the act or charter of creation confers, either expressly or as incidental to their existence. *Ang. & Ames on Corp.*, 1 to 7. The general act gives them power to issue war-

rants to enforce their orders as a board or tribunal, but gives them no power to maintain any action or other legal proceeding.

“It is contended on behalf of the supervisors that the county of Monroe is not liable for the expenses incurred by the board of health of the city of Rochester, because that board is appointed under the authority conferred by the city charter, and not under the general act.

“The general act was passed April 10, 1850, and took effect immediately; (*Sess. Laws of 1850*, 690, *chap.* 324;) and in terms applied to the several boards of health, then organized in cities and villages, and to the several boards to be appointed under the general act. The cities of New York and Brooklyn are specially excepted from its provisions.

“When this act was passed and took effect, the city of Rochester had a board of health which was constituted under the provisions of the act of 1844 to consolidate and amend the act of incorporation (*Session Laws of 1844*, 207, *tit.* 2,) and had been continued from that time up to the passage of this act.

“On the same day of the passage of the general act, another act was passed, to consolidate and amend the several acts relating to the charter of the city of Rochester, in which the same provisions were contained, in regard to a board of health, which were contained in the act of 1844. This act did not take effect until twenty days after its passage, and expressly provided that all officers then in office, except assessors and collectors,

should continue to exercise their offices until the expiration of the term for which they were elected. The general act, therefore, applied to the board of health in existence in the city of Rochester at the time of its passage. The same board has been continued under the amended charter, and there can be no doubt, I think, that the general act is applicable to it.

“The first and second sections of the general act provide for the appointment of boards of health in cities, villages and towns, where such boards did not then exist. The third section relates to the powers of such boards, and confers the same powers upon the several boards already organized, as upon those to be organized under the authority of the act, where they did not then exist. The general act did not attempt to change or interfere with the mode of appointment in places where appointments were provided for and regulated by statute and had been made. But it did prescribe their power and duties, and made the expenses incurred by them in executing those powers, and performing those duties, a charge upon the county in which they were respectively situated. It can make no difference under what act, or in what particular form, their appointment is authorized and made. Their general powers and duties are prescribed and regulated by the general act, and the expenses incurred in carrying out these powers are made a county charge. The fifth section is clear and full upon this subject, and includes all boards, whether their appointment was authorized and regulated by former special acts, or by

the general act. But the expenses which are made a county charge, are those incurred in the execution of the powers conferred by the general act, and no others. The city charter, as consolidated and amended in 1844, and again in 1850, authorized the common council to prescribe the powers and duties of the board of health. Whether the common council can, in the exercise of this authority, confer any powers upon the board of health, not conferred by the general act, it is not necessary to inquire. But if they can, the expenses of carrying out such additional powers would not, most clearly, be a county charge, and the board of supervisors would have no right or authority to allow them as such. And I take it, before a claimant can compel a board of supervisors to allow a claim, as a county charge, he is bound in some way to make it appear to such body that his claim is properly chargeable upon the county. I conclude, therefore, that the expenses incurred by the board of health of the city of Rochester, in the execution of the general act, are properly chargeable upon the county of Monroe, and are to be audited and allowed by the board of supervisors, and collected by general tax, whenever presented in the form, and verified in the manner prescribed by statute.

“The next question which arises is, was it the duty of the board of supervisors to audit and allow the accounts as presented, or any portion of them; and should they have been compelled to do so by mandamus, had the proper parties applied?

County charges.] “The only authority possessed by boards of supervisors to make claims, whether presented by individuals or corporations, a county charge, is conferred by statute. It is made the duty of these boards (1 R. S. 367, § 2) to examine, settle and allow all accounts chargeable against their respective counties, and to direct the raising of such sums as may be necessary to defray the same. But before they are authorized to allow any account and direct the raising of money to defray it, it must be presented properly made out and verified. The mode of presentment and verification, is prescribed by the twenty-sixth section of the same act. The account is to be presented in items, and not in gross, and is to be accompanied by an affidavit made by the person presenting or claiming the same, stating that the items are correct, and that the disbursements and services charged therein, have been in fact made or rendered, and that no part thereof has been paid or satisfied. Unless accounts are so presented and verified, the board are prohibited from allowing them as county charges. The defendants, in their return, allege that these accounts were presented as claims on behalf of, and as belonging to the city of Rochester, and that the only affidavit accompanying said accounts, or attached thereto, was the affidavit of H. S. which is attached to, and made part of said return. And this is not denied or controverted by the answer of the board of health. This affidavit does not contain a single requisite prescribed by the statute. H. S. as appears by the affidavit, was the auditor of the board of

health of said city. He deposes that the papers annexed, which are the accounts, contain a true and exact statement of the individuals whose accounts were allowed; that he drew orders in favor of such individuals for the sums set opposite their respective names, upon the city treasurer, and that such orders were paid by such treasurer.

Form of accounts.] “There is not a word to show that the accounts were correct, and for services actually rendered, or disbursements in fact made, by the direction and in pursuance of the authority of the board of health, or any thing having the remotest bearing upon the subject. Clearly the board of supervisors had no right or power to allow these accounts as a charge upon the county, presented in this form.

“If the auditor of the board of health—an officer unknown to the statute—had seen fit to audit and allow, and the city treasurer to pay these accounts without requiring them to be presented in the form, and to be verified in the manner required, to authorize their allowance by the board of supervisors, they did it in their own wrong. Their ignorance or mistakes could confer no authority upon the supervisors to violate the statute. If the city designed making these claims a county charge, it was the duty of its authorities to see that the accounts, when presented, and allowed and paid from their treasury, were so made out and verified, as to entitle them to be audited by the board of supervisors.

“But the accounts were not proper in point of form and statement. The statute requires them

to be presented in items. These accounts are all in gross sums—the total amount paid each individual, without any items whatever.

“The statute has made it the duty of supervisors, before allowing any account, to see the items, the particular service rendered, or goods furnished, and the price charged therefor, to enable them to judge of the honesty and legality of the transaction, and the justness of the amount of compensation claimed. This is important information for them, as guardians of the public interests, to possess; as without it, a just and upright and impartial discharge of their duties would be impossible.

“In addition to this, there are charges in the account presented which clearly were not allowable as county charges. One is, “for the purchase of West Spring St. hospital, \$900.” The statute does not authorize these boards to purchase and hold real estate. Among their general powers, the 5th sub-division of section two gives them authority to *procure* suitable places for the reception of persons under quarantine, and persons sick with the Asiatic or malignant cholera, or any other malignant, infectious or contagious disease. This grant of power is satisfied by allowing them to lease for the time being, and as occasion shall require, suitable places of reception for the classes of persons named; or in case they are not able to do that, to erect temporary establishments for that purpose. The object of the statute in conferring this power, obviously was to enable these boards to meet temporary emergencies, and not to incorporate perma-

ment hospitals. Whether this purchase is completed or not, does not appear, nor to whom the title is, or is to be conveyed. But it is quite certain that before these boards of health can purchase and permanently hold and own real estate, the legislature must confer additional powers for that purpose.

“On the whole, therefore, I am entirely satisfied that the board of supervisors ought not to have allowed these accounts, in the form in which they were presented, and also that the board of health cannot maintain this proceeding.”

Motion denied.

[*Monroe General Term, Sept. 5, 1854, Johnson, Welles and T. R. Strong, justices.*]

By-laws not binding unless published.] It is only when a regulation of the board of health has been made and *published*, that a person can be convicted for its violation, under the 4th section of the act of 1850, chap. 324. *Reed v. The People*, 1 *Parker Crim. Report*, 481.

This case originated in the village of Albion. The board of health in that village was appointed by the trustees under the act above cited of 1850. The board adjudged certain premises of Reed a nuisance; the ordinance however was not general in its character but applied only to the premises of Reed. For an alleged violation of the order of the board, Reed was indicted and convicted. A writ of error was brought to the Orleans sessions and judgment reversed. *Justice Welles*, in delivering the opinion of the court, remarks: “The board of health probably had the power to adjudge and

declare the premises a nuisance and to procure it to be abated. The *regulations* which boards of health have power to make, so as to attach to the violation of them, the penalties provided in the fourth section, are to be in the nature of by-laws; they are to be *prescribed* and *published*, and are to affect generally all persons within the scope of their operation. The term *regulation* is to be understood in contradistinction to a judgment, sentence, decree or order, and contemplates the exercise of a power in its character legislative rather than judicial." (See further as to the powers of such boards, same case, 1 Par. Cr. R. 493.)

CHAPTER XV.

OF COMMISSIONERS OF LOANS.

Name and origin of the office.] The statute designation of the officers whose duties are pointed out in this chapter is "The commissioners for loaning certain moneys of the United States, of the county of ——." The county for which the officer is appointed must be inserted after the word of, and then the designation of the officer is complete. The foregoing designation is the name and style to be used in all legal and other proceedings by them in their official capacity. 1 R. S. 564, 4th ed. Some confusion has existed in practice in giving the proper name to this office. This has arisen from the fact that a number of different statutes have been passed from time to time in which offi-

cers, whose duties are somewhat similar to those mentioned in this chapter, were characterized by names in some respects alike, yet differing in the transposition of the words.

In the early history of the State, when money was exceedingly scarce and the settlers of a new country were recovering from the impoverishment of a protracted war, statutes were passed providing for the loan of such moneys to the people of the State as could be spared from the treasury. These statutes began to be passed soon after the close of the revolutionary war. An act of this kind was passed March 14, 1792. Another was passed modifying those then in force, in April, 1808.

These acts were modified and new provisions enacted by the laws of 1819, p. 37, and by the laws of 1820, p. 24, and 1821, p. 17, and 1822, p. 265, and 1823, p. 205, and in 1832. The officers appointed under the earliest statute were called *the loan officers*, and for convenience in after times, were called *old loan officers*. The next designation were those appointed under the act of 1792, these were called *loan officers*, and for convenience were commonly called *new loan officers*. They are so recognized in the revised statutes. 1 *R. S.* 375, 1st ed ; 367, 2d ed.

Those appointed under the act of 1808, are denominated *the commissioners of loan*.

These officers formerly derived their appointment either from the judges of the court of common pleas and the board of supervisors, in those counties to which the state loaned money, or from the council of appointment.

The officers, whose duties are defined in this chapter, derive their authority from the act passed by the Legislature of this State in 1837. *See chap. 150, p. 121, of the laws of that year.*

How appointed.] The commissioners provided for under the act last above mentioned, are appointed by the governor with the consent of the Senate. There must be two appointed in each county.

Term of office.] They hold their office for the term of two years.

Who eligible.] They must be reputable inhabitants and must reside in the county for which they are chosen. A supervisor is not eligible to this office, (*ante, page 1,*) for the manifest reason that it would be improper for him to sit in judgment on his own acts. The board of supervisors being the body to which the commissioners must account. *Ante, page 58.*

The fund with which the commissioners have to do.] In 1836, an act of congress was passed by which a certain proportion of the surplus money in the treasury of the United States, was deposited with the State of New-York for safe keeping. In 1837, an act was passed by the legislature of this State, apportioning such money among the several counties, according to the population, for the purpose of being loaned therein.

The first step for the commissioner after receiving his appointment is to execute his bond. The form of the bond is hereinafter given.

Bond how given and approved.] The commissioners, before they enter upon the discharge of their duties, must execute separate bonds to the people of

the State of New-York, with two or more sufficient sureties, to be approved of by the county judge and the clerk of their respective counties, signified by endorsing their approbation on the back of the bond, which bond must be in such penalty as the comptroller shall direct for such county, and conditioned for the true and faithful performance of the duties of their office, without favor, malice or partiality.

Oath, to be on bond, and both filed in comptroller's office.] Each commissioner must take the constitutional oath, which oath must be endorsed on the bond and signed by the officer before whom the same is taken, and the bond so endorsed must be filed in the office of the comptroller; and in case of the forfeiture of any such bond the comptroller is directed to cause the same to be put in suit.

Actions brought by commissioners.] Actions may be brought by the commissioners upon any contract lawfully made with them or their predecessors in their official character, and to recover damages for any injuries done to their rights or to the property in their charge, or which was in the charge of their predecessors as such commissioners; and all such actions must be brought by the commissioners in the name of their respective offices.

Suit not to abate by death, &c. of commissioners.] No suit commenced by such commissioners will be abated or discontinued by the death of such commissioners, their removal from the county or their removal from or resignation of their offices, or the expiration of their term of office; but such suit will be continued and prosecuted by their succes-

sors in office, in like manner as if the commissioners who commenced such suit had continued in office.

Recovery against commissioners, how settled.] Wherever in any suits by or against the commissioners, any debt, damages or costs, are recovered against them, the comptroller, in case he is satisfied that such recovery was not had in consequence of any default or misconduct on their part, may direct them to pay the amount so recovered out of the interest of the moneys loaned, and he is authorized to allow to the commissioners the amount so paid in their official accounts.

Money, how drawn from the treasury.] When the commissioners have taken the oath of office, and filed with the comptroller such bond as above directed, the comptroller and treasurer authorize the commissioners in such manner as they, (the comptroller and treasurer,) may direct, to draw for their respective proportions of the moneys above mentioned.

How to be loaned.] The commissioners must loan out the money to the inhabitants of their respective counties, on mortgage on improved lands in the same county, owned by the borrower, and apportion the same among the cities, towns and wards of their respective counties according to the population as ascertained by the last preceding census, and must loan out the moneys to the inhabitants of the several *cities, towns and wards* in their respective counties, on mortgage on improved lands in the same county, owned by the borrower: but if the whole sum apportioned

to any city, town or ward should not be applied for and taken up, then the excess not applied for, must be apportioned by the commissioners among the other cities, towns and wards applying for the same, according to their respective population: The commissioners, first giving public notice in writing by posting up such notice on the outward door of the court-house in the county, or of the building where the county court was then last held in the same county, and at one public place in each town and ward in the county, and by causing the same to be published at least in one public newspaper in their respective counties, wherever there are any printed in the county, that at a certain place to be designated in such notice, and on a certain day at least fifteen days after the notice is posted and published, they will be ready to receive applications from borrowers.

Applications to be entered in minute book, &c.] When borrowers make their applications for loans, their names and the sums they apply for must be entered in the minute book of proceedings hereinafter mentioned: and every borrower is entitled to be accommodated according to the priority of his application, subject to the proviso hereinafter mentioned, if there should be no reasonable objections to the title and value of the lands offered to be mortgaged by him.

In what case to be abated.] But if the amount of the applications of the borrowers in each city, town and ward, made upon the first day, exceeds the sum apportioned to such city, town and ward, then the sums so applied for by such borrowers

will be proportionably abated ; and all applications must be received from borrowers on the first day designated for that purpose.

In what case certificates to be given to borrowers.] In case the whole amount to be loaned to the borrower is not paid to him at the time of the execution of his mortgage, the commissioners will give to such borrower a certificate, specifying the amount remaining unpaid and that the same will be paid to such borrower on demand after being received by the commissioners.

Interest when to be deducted.] Any interest which accrues on the sum so certified, from the time of the execution of such mortgage to the time the same is received by the commissioners, must be deducted from the interest which accrues on the amount loaned to such borrower ; and the mortgages taken will be deemed good and valid incumbrances for the whole amount specified therein from the day of the date thereof, in like manner as if the whole amount had been paid to the borrower on that day.

Commissioners to be satisfied as to value, and that borrower has a title in fee.] The commissioners, before they accept a mortgage on lands for any of said moneys, must be satisfied that the borrower has a title in fee to such lands, and that the same are free and clear of all incumbrances, and are worth double the amount of the sum loaned, exclusive of buildings and of the value of the rent in perpetuity if any charged thereon ; and wherever the commissioners shall deem it necessary, they may, in addition to the examinations for that purpose

hereinafter directed to be made, require the borrower to satisfy them by proper evidence that he possesses an estate in fee in such lands, free and clear of all incumbrances.

In what sums money to be loaned.] The commissioners must loan the moneys in sums not exceeding the sum of two thousand dollars, except in the city of New-York, and in that city in sums not exceeding the sum of five thousand dollars; and in the several counties, except in the city of New-York, in sums not under two hundred dollars, and in that city not under five hundred dollars, unless the proportion be less to any one person by means of more than the amount apportioned to any county having been applied for.

Interest, when payable.] The interest of such moneys, must be payable annually on the first Tuesday of October in each and every year, and such moneys are required to be loaned on a credit of not exceeding five years, subject, however, to the condition of being called in, the one half on a previous notice of one year, and the remainder on a previous notice of two years.

Payment of principal, when permitted.] No borrower is permitted to pay any part of the principal moneys loaned, on any day other than the first Tuesday of October in any year, unless so many offer payment on that day that the commissioners cannot during the day receive the whole sums offered to be paid, in which case they may continue to receive until all who on that day offered, have paid the moneys so offered. But the commissioners in their discretion may at any time receive the

principal sum loaned, with the interest that would be due on the first Tuesday of October then next, and discharge the securities; and when moneys are paid to the commissioners, the same must be paid into the treasury forthwith. *Laws of 1838, chap. 193.*

In what case commissioners to be removed.] In case any commissioner should remove out of the county, die, or neglect or refuse to perform the duties required of him, or refuse to give additional security when required, or be guilty of any misconduct in office, upon report or complaint made thereof to the governor, he will remove him from office.

New appointment.] The governor will appoint some other reputable inhabitant of said county as such commissioner, who will hold his office and discharge the duties thereof until the next meeting of the senate.

Commissioners may be summoned to answer charges.] In case the commissioner shall be guilty of any misconduct in office, the governor may upon complaint, summon the person charged with improper conduct to appear before him, and will hear and determine the subject matter of the complaint; and on being satisfied of the truth thereof, the governor is required to remove such commissioner, and to appoint some other reputable inhabitant of said county in his stead, who will hold his office and discharge the duties thereof until the next meeting of the senate.

Commissioners may resign.] Any commissioner who shall have faithfully discharged the duties of the office, may resign the same, and the governor, with

.... the consent of the senate, will appoint a fit and proper person to supply any vacancy occasioned by such resignation.

Commissioners to retain amount of disbursements in case of sale.] The commissioners, in case of a sale of any lands mortgaged, may retain out of the moneys for which the lands are sold, besides the principal and interest, as hereinafter mentioned, the amount of the disbursements paid out by them on account of the advertisements and sale, and the sum of five dollars for their services in preparing the notices of such sale and superintending the same: But where the moneys due on the mortgage are paid before a sale of the premises, the commissioners are not authorised to charge or receive more than the amount of the disbursements and two dollars for their services.

To report to comptroller.] The commissioners, on the first Tuesday of December in every year, and also whenever the comptroller shall require it to be done, must render a full and detailed account to the comptroller, in such form as he shall prescribe, of all the moneys by them received, and of the sales of all lands by them made, and of all deficiencies which may happen by such sales or otherwise; and whenever it appears by the account of any of the commissioners that lands have been purchased by them, or any of them, for the people of this State, the comptroller makes a report thereof to the legislature at their next session.

Moneys remaining four weeks.] Moneys that remain in the hands of the commissioners for want of borrowers, for the space of four weeks after the first

day appointed for loaning the same, may be loaned out by mortgage on improved lands in the same county, to any person who will borrow the same, in any sum, in the city and county of New-York, not exceeding ten thousand dollars, and in the other counties in any sum not exceeding five thousand dollars.

Interest to be paid to treasurer.] The commissioners on or before the first Tuesday of November in every year, must pay to the treasurer of this State, the interest of the money committed to their charge, at the rate of seven per cent. per annum, subject, however, to the following deduction:

Compensation of commissioners.] They may retain, as a compensation for their services, out of the interest, in each year, at the following rates: Upon twenty-five thousand dollars, or a less sum, three quarters of one per cent; upon the further sum of twenty-five thousand dollars, or less, half of one per cent; and where the whole sum exceeds fifty thousand dollars, half of one per cent, except in the city and county of New-York, in which city and county the commissioners upon all sums exceeding fifty thousand dollars, are permitted to retain one quarter of one per cent only.

Evidence of title to be given to purchaser at sale.] Upon every sale of lands the commissioners must fill up the blanks in one of the sheets of blank mortgages to be provided by them, like the original mortgage, and attest the same as a true copy under their hands and seal, and deliver the same, instead of the original mortgage, to the purchaser as the evidence of his title.

Form of bond.] The bond to be given by the commissioners must be substantially as follows, to-wit: "Know all men by these presents, that we are held and firmly bound unto the people of the State of New-York, in the sum of to be paid to the said people; for the payment whereof we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the day of in the year one thousand eight hundred and . Whereas the above bounden has been appointed one of the commissioners for loaning certain moneys of the United States, for the county of : Now the condition of this obligation is such, that if the above bounden shall well, truly and faithfully perform the duties of said commissioner pursuant to the act entitled "An act authorizing a loan of certain moneys belonging to the United States, deposited with the State of New-York for safe keeping;" and shall discharge his said duties without favor, malice or partiality; then this obligation to be void, otherwise to remain in full force and virtue. Sealed and delivered in the presence of ."

Commissioners to procure books, blank mortgages, &c.] The commissioners are required, under the directions of the comptroller, to procure such books with blank forms, and such printed mortgages with blanks, as will be necessary: the expense of which will be a charge on the interest to be received on the moneys loaned as above mentioned.

Interest on mortgage from its date.] The commissioners shall exact interest on the moneys loaned,

from the day of the date of the respective mortgages, with the single exception before mentioned.

When one commissioner may execute a deed.] In case of a sale of lands, and a vacancy in the office of one of the commissioners in the county where such sale is had, it is proper for the remaining commissioner to execute a deed for the lands so sold, which will have the like effect as if executed by two commissioners for such county.

Commissioners to attend office to receive money.] They must attend their office every year, to receive the moneys directed to be paid to them, upon the first Tuesday of October, and thereafter on the Tuesday and Wednesday of each week for the space of three weeks.

Commissioners to examine lands and titles, &c.] Before they accept any mortgages, they must view the lands offered to be mortgaged, or make due inquiry respecting the value thereof, and examine the titles by perusing the deeds, patents, surveys, and other writings and conveyances by which the same are held; and they are required to administer to all persons applying to borrow any of the said moneys, the following oath, viz:

Oath of mortgagor.] "I, do swear, that I am bona fide seised in fee simple of the lands, tenements and hereditaments by me now offered to be mortgaged, in my own right and to my own use; and that the same have not been conveyed to me in trust, to borrow any sum or sums of money upon the same, for the use of any other person or persons whatsoever; and that the said premises are free and clear from all gifts, grants,

sales, mortgages, judgments, liens, and from all other incumbrances whatsoever, to my knowledge and belief:" and where the lands offered to be mortgaged are subject to a rent in perpetuity, the borrower, in the said oath may make an exception of such rents. And in order the better to satisfy the said commissioners as to the title and value of what is offered in mortgage by borrowers, they or either of them are hereby authorized and empowered to examine the borrower and witnesses concerning the same, upon oath, and to administer such oath.

Examination of borrower to be entered in minute book.] A brief minute of the examination, and the names of the persons examined, must be entered in the minute-book of proceedings.

Deeds of mortgaged premises to be recorded.] No money may be loaned under these proceedings, unless the title deeds of the real estate offered to be mortgaged are recorded in those counties where such recording is necessary to render valid the titles to land, and in all other counties, unless such title deeds, if not recorded, must be deposited with the commissioners, or one of them, until they be recorded.

Moneys to be loaned at seven per cent.] The loans must be made at an interest of seven per cent. per annum.

Witnesses to mortgage, how minuted, fees therefor, &c.] The mortgages taken, must be executed in the presence of two or more witnesses, who must subscribe the same as such witnesses: and the substance thereof must be minuted in a book by the

commissioners, to be by them kept for that purpose in their respective counties ; for the filling up of the mortgage, and the making such minute, the borrower will pay to the commissioners the sum of one dollar, and no more. The mortgage and minute are declared to be matter of record ; and an attested copy of the mortgage, if in being, or of the minute in case the mortgage is lost, under the hands and seals of the commissioners, is good evidence of the mortgage in any court within this State.

Duty of commissioners in taking security, receiving payments, &c.] The commissioners, at the time of the lending of the moneys, take the security for the same ; and for every sum paid to them they give to the person paying, a receipt, and enter one minute of such payment on the back of the mortgage, and another minute in the book of accounts by them to be kept, and that without any fee or reward ; and when the whole of the principal and interest due on any mortgage is paid, they must give the party making the payment, a release of the mortgage, and tear from the same the name and seal of the borrower, and make an entry on the margin of the mortgage, and in the margin of the minute made thereof, of the time such release was given, for which release the releasee must pay the sum of fifty cents ; and whenever any of the said principal moneys are paid in, the commissioners are required, at the end of the annual meeting at which such payment is made, to compute the whole amount of the principal moneys so paid, and then immediately loan out the same in

like manner, and upon the like security, as is hereinbefore mentioned.

Moneys, books, etc., to be delivered to new commissioners on oath.] When a commissioner is appointed in the place of a former commissioner, and has taken the oath of office and filed the bond required, such former commissioner, his executors or administrators, upon demand, must deliver to the commissioner so appointed, all the moneys, books and papers that were in such former commissioner's custody belonging to his office, upon oath, to be taken before any judge of the county court; and in case any such commissioner, should delay or refuse to make such delivery on oath when demanded, the bond of such former commissioner will be forfeited.

When commissioners to be seised of fee of mortgaged premises.] If any borrower neglects to pay yearly, and every year, on the first Tuesday of October, or within twenty-three days thereafter, on one of the days on which the commissioners are directed to attend their respective offices, the yearly interest due on his mortgage, and also the principal moneys loaned to him when due, then and in either of these cases, the commissioners of the county where the lands mortgaged by the borrower are situated, become seised of an absolute and indefeasible estate in fee in the lands, to them, their successors and assigns, to the uses mentioned in this chapter, and the mortgagor, his or her heirs or assigns, will be utterly foreclosed and barred of all equity of redemption of the mortgaged premises.

Mortgagor to hold possession until sale.] The mortgagor, however, his or her heirs or assigns, will be entitled to retain possession of the mortgaged premises until the first Tuesday of February thereafter, and to redeem the same as hereinafter mentioned.

Mortgaged premises when to be advertised.] The commissioners, within eight days after the last Wednesday of their attendance, yearly, must cause an advertisement to be fixed up at not less than three of the public places of the county where the premises are situated, containing a description of the lands mentioned in the several mortgages foreclosed, and giving notice in such advertisement that on the first Tuesday of February then next, such lands will be sold at the court-house of the respective counties where the lands are situated, at public vendue, to the highest bidder; and the commissioners must also cause a copy of such advertisement to be published in at least one of the public newspapers printed in the county, if any such there be, and if there be no newspaper published in such county, then in the nearest paper to said county, successively once in each week, until the day of sale.

When to be sold.] The commissioners of the respective counties are required on the first Tuesday of February, yearly, to expose the lands described in the mortgages so foreclosed to sale at public vendue, and upon such sale they must convey the lands to the highest bidder.

Rights acquired by purchaser.] The purchaser will hold and enjoy such estate in the lands as was

conveyed to the commissioners by the mortgages, clearly and absolutely discharged from all benefit and equity of redemption, and all other incumbrances made after the execution of the mortgage by the mortgagor, or his heirs.

Fees for conveyance.] Such purchaser must pay the commissioners for drawing and executing such conveyance, the sum of one dollar.

When commissioners to enter mortgaged premises.] When lands mortgaged to the commissioners are exposed for sale, and no person bids at such sale for the lands, a sum equal to the amount due on the mortgage for principal and interest, and the expenses of the advertisements and the sale, or if any person to whom such lands at such sale are struck off, does not pay for the same, then the commissioners must enter into and take possession of the premises, and let the same upon the best terms they can obtain for the benefit of the State, until the third Tuesday in September then next, and on the same third Tuesday in September, must sell the premises at public vendue to the highest bidder, giving at least six weeks' previous notice of such sale in the manner directed above.

When to bid in premises for the State.] If upon such sale no person bid a sum equal to the amount due on the mortgage for principal and interest, including all costs and expenses, or if any person to whom the premises are struck off shall not pay for the same, then the commissioners must bid therefor in behalf of the people of this State, a sum not exceeding the amount at which the said lands shall be appraised by the appraisers herein-

after mentioned, in case such bidding shall be necessary to prevent the sale of such premises for a less sum.

On what condition title to revert to mortgagor.] If the mortgagor, or his or her heirs or assigns, at or before the sale of the mortgaged premises, pay to the commissioners all such sums of money as may be due and payable on such mortgage on the first Tuesday of October then next, for principal and interest, and costs and charges of foreclosure, together with the charges of advertising the same, then the title in fee to the said mortgaged premises will revert to and reinvest in the mortgagor, his or her heirs or assigns, and the commissioner must accept the money, and the costs and charges, and permit the owner, or his or her heirs or assigns, to take possession of the premises, and to hold the same until default be made in payment of any further sum on the mortgage.

Commissioners not to be interested in purchase.] The commissioners in making any sale of any mortgaged premises, may not directly or indirectly be interested in the purchase of the mortgaged premises so sold, or any part thereof. All purchases made contrary to the foregoing provisions are void.

Sale may be postponed to ascertain value of premises.] When lands are advertised for sale by the commissioners, it will be lawful for them at any time before the premises are actually struck off, to postpone the sale at their discretion, for the purpose of inquiring into the value of the premises, and to employ such persons as they may select to appraise the same.

Compensation of appraisers.] The persons employed by the commissioners to make any such appraisement, will receive a reasonable compensation for the same, to be settled and allowed by the comptroller, and to be paid out of the interest of the moneys loaned.

When commissioners to bid amount due the State.] If the lands are appraised at a sum equal to or exceeding the amount due on the mortgage given to the commissioners, including all costs and expenses, the commissioners on the sale must bid therefor in behalf of the people of this State to the amount of the moneys due and costs, in case such bidding is rendered necessary to prevent the sale of such premises for a less sum.

When to bid amount of appraisement.] If the premises are appraised at a less sum than the amount due, the commissioners must in like manner bid to the amount of such appraisement and no more; and all purchases of mortgaged premises made by the commissioners at any mortgage or other sale had under their direction, must be in the name of the people of this State.

Mortgagor to be credited amount of bid.] Whenever any mortgaged premises are struck off to the commissioners for any amount less than the amount of mortgage money, interest and costs, no greater sum can be credited to the mortgagor or any other person on account of such sale, than the amount bid for the premises sold, deducting therefrom all cost and charges of sale.

Moneys received on sale, how disposed of.] The money for which the mortgaged premises are sold, shall,

upon the sale, be paid to the commissioners, out of which they must retain in their hands the amount of the principal then due on the mortgage, together with the interest which would have been due thereon on the first Tuesday of October next thereafter, if such sale had not been made, and also the expense of the advertisements and of the sale.

Surplus to be paid to mortgagor.] The remainder, if any, the commissioners must pay to the mortgagor, his or her heirs or assigns.

Principal moneys may be loaned to purchaser of mortgaged premises.] If the purchaser of the mortgaged premises offers to borrow the principal to be paid by him for said premises, and if the commissioners are satisfied that the security offered for such loan conforms in all respects to the requirements of law, such purchaser will be preferred to any other borrower.

Assignee of mortgagor to serve notice, &c.] The commissioners are not obliged to take notice of any assignee of the mortgagor, unless such assignee serves a notice of his right upon them at or before the time of sale, which notice they must enter on the mortgage and in the minute thereof whenever requested by such assignee, he paying twenty-five cents for such entry, and the assignees of the mortgagor shall be preferred according to the priority of their entries of such notices. They are authorised on a sale of mortgaged premises to retain in their hands no more than the amount of the principal then due, and interest, and the expense of the advertisement and sale; and if any excess should be

paid to them under the last above mentioned provision, the comptroller is required to refund the same to the mortgagor or his legal representatives.

Laws of 1844, chap. 15.

When commissioners to prosecute mortgagor.] If after any lands are mortgaged according to the directions of said act, there should, in the judgment of the commissioners, be good grounds (which they must insert in the minutes of their proceedings) for believing that the mortgagor had no good right or title to the premises mortgaged, or had otherwise broken the covenants contained in his mortgage, so that the moneys advanced in loan upon the credit of the mortgaged premises were in jeopardy, they are required to commence an action upon the mortgage against the mortgagor, his or her heirs, executors or administrators, and the same to prosecute to judgment in any court of record, for the recovery of the whole moneys loaned upon the mortgage, and the interest then due, and which also should become due for three months next following the judgment, with costs; and the court in which such actions are brought is authorized and directed to give such short day for the rules of pleading therein, that judgment or a trial and final determination may be had the first term of the court after the term of such court at which the defendant first appeared to the same action.

Offices of commissioners, where kept.] The offices of the commissioners must be kept at the court houses of their respective counties; and where there are two court houses in the county, at such court house as the commissioners shall select; and

where there is no court house in the county, then at the place where the county court is held in the same county, or at some convenient place near the same.

When to give notice of first meeting, &c.] The commissioners as soon as they have taken the oath of office and filed the bond required, must give such public notice of the first day of their attending their offices for the purpose of receiving applications from borrowers as is herein before mentioned; and they must attend the same on that first day, and on every Tuesday and Wednesday in every week, for the space of four weeks thereafter, if such attendance be necessary.

False swearing declared perjury.] If any person shall falsely swear or affirm in any of the cases where an oath or affirmation is required to be taken by this act, or shall wilfully and knowingly act contrary to any oath or affirmation he has taken in pursuance of this act, such offence shall be deemed to be perjury, and the offender, upon conviction thereof, shall suffer the like pains and penalties as in cases of wilful and corrupt perjury.

Books of commissioners may be examined.] The commissioners must permit any person, at reasonable times, to search and examine their book of mortgages, and any other book required to be kept by them, in their hands and custody, upon paying twelve and a half cents for the search.

Mortgages when to have the effect of a record.] The execution of the respective mortgages, and their entry or being placed in the books of mortgages of the commissioners have the like lien, priority,

operation and effect as if such mortgages had been duly recorded in the book of mortgages in the office of the clerk of the county in which the mortgaged premises are situated.

Duty of commissioners in taking and cancelling mortgages.] All mortgages must be taken by the commissioners by filling up one of the blanks in the book of mortgages to be provided by such commissioners. And no mortgage shall be defaced or torn out of such book; but when the mortgagor pays the whole principal and interest due on the mortgage, the seal and name of the mortgagor must be torn off; and the commissioners will proceed in taking the mortgages at the commencement of the book of mortgages, numbering the mortgages as they are taken, and they must insert the mortgagor's name and the number of his mortgage in an alphabet to be prepared and placed in the book under the letter answering to the mortgagor's surname. The commissioners, when required by any person interested in any lands which may be sold under the foregoing regulations, are required to furnish a brief certificate of their proceedings, and of the proofs of such proceedings as the same appear from the minute books, entries and records kept by them in relation to any such foreclosures and sale, so far as the same may affect such lands, and every such certificate under the hands and seals of the commissioners or one of them, duly acknowledged, is deemed prima facie evidence of the facts therein stated, and may be read in evidence in court. For such certificate the commissioners are entitled

to demand and receive from the person requiring the same the sum of three dollars. *Laws of 1844, chap. 326.*

Commissioners to have the care of land until sold.] When lands have been sold, and the land bid off to the people of the State, and the mortgages delivered to the comptroller, the commissioners must exercise supervision and care over the same until they are finally disposed of according to law. *Id.* 1 R. S. 574, 4th ed.

Minute book, how kept.] The commissioners shall, in a proper book to be provided for that purpose, minute the substance of each mortgage, that is, the number thereof, the date, the mortgagor's name, the sum lent, and the boundaries of the lands mortgaged; and whenever one of the commissioners has the custody of the book of mortgages, the other shall have the custody of the said minute book; and the mortgagor, for his satisfaction, may examine, or see the minute examined with the original mortgage, and shall, together with the subscribing witnesses, sign such minute.

What entries to be made in it.] They must insert the minutes of their proceedings in such minute book, as follows: First, the day they meet, place, hour, and commissioners present: Second, if any one is absent, they must at their next meeting minute the cause of his absence: Third, they must enter the hour that every one applies for the loan of money, and the sum he applies for: Fourth, the reasons why a prior applicant did not receive the money according to his application, and the substance of all examinations as to titles and value:

Fifth, the moneys received : Sixth, on the last day of their first days of meeting for receiving moneys yearly, the mortgages foreclosed, and the number and sums of them : Seventh, the orders for and copies of the advertisements for sale and places at which they are set up, and the persons names who set them up : Eighth, the names of the purchasers of lands and the prices for which such lands sold, and the payment of the overplus to whom it belongs, with the time of and witnesses to such payment : Ninth, in case any principal moneys or a part thereof are paid in, before the times of payment specified in the mortgages, the whole amount of such principal sums so paid in : Tenth, the cause of all suits, and the information they have received in relation thereto, and from whom, at length, or if too long, they may minute the substance.

Commissioners may require additional security of mortgagor.] When the commissioners consider it necessary to require additional security for the purpose of securing the payment of moneys loaned, either on account of the reduction in value of the premises mortgaged, or on account of any substantial defect in the description of such premises in the original mortgage, it is their duty to demand such additional security as they shall think requisite, from the mortgagor, his representatives or assigns, and take the same in like manner as original mortgages are directed to be taken by them ; and such additional securities may be proceeded upon in case of default in payment, in the same manner as original mortgages.

Proceeding where mortgagor refuses to give additional security.] In case any mortgagor, his heirs or devisees, who shall be in the actual possession of the mortgaged premises, refuse or neglect to give such additional security as may be required by the commissioners, for the purpose of supplying any substantial defect in the description of the mortgaged premises, the commissioners may file a bill to compel such mortgagor to supply such defects in such manner as the court shall deem equitable; and in every such case the court has power to decree costs against the defendant, if in its opinion costs ought to be decreed.

Commissioners to exhibit mortgages &c. to board of supervisors.] “§ 50. It shall be the duty of the said commissioners to exhibit to the board of supervisors of their respective counties, at each annual meeting of the board, all the mortgages and other securities taken by them or their predecessors in office, for moneys loaned under and in pursuance of this act, together with their books of accounts, minutes and vouchers, in order that the board of supervisors may ascertain whether the moneys committed to the charge of such commissioners have been loaned and continued to be kept as loans according to law.”

Supervisors to examine mortgages and report to comptroller.] “§ 51. It shall be the duty of the board of supervisors, at each annual meeting of the board, to carefully examine all such mortgages and securities, accounts and minutes so to be annually exhibited to them, in reference to the state in which they shall find the said moneys, and to their safety and the sufficiency of the securities taken for the

payment thereof, and to give to the said commissioners such directions as to taking additional security from the borrowers as the said board of supervisors shall deem proper and necessary: And the said board shall forthwith certify, under their hands, the state in which they shall find the said moneys, and the result of such examination, and what directions they have given to the said commissioners as to their taking such additional security, and to transmit such certificate by mail to the comptroller."

How sales to be made and notices given where county is divided.] Whenever any county in which loans may have been made, shall be divided, and default shall be made in the payment of principal or interest of any such loan, the commissioners under whose care any mortgage given for any such loan may be, have power to proceed to a sale of the mortgaged premises, whether the mortgaged premises are situated within the county of such commissioners or not; and in such cases all notices required to be affixed or published, must be affixed and published in the county in which the mortgaged lands may be, and the sale must be made in that county.

When comptroller to credit commissioners with amount of the mortgage.] Whenever any mortgaged premises shall be bid in by the commissioners for an amount less than the mortgage money, interests and costs due, it is the duty of the comptroller, upon satisfactory proof being made to him that nothing more can be collected upon any covenant in the mortgage, or upon any bond or other security for the mortgage debt, and that the deficiency has not arisen from any negligence or fault of the commis-

sioners, to credit them with the full amount due on the mortgage at the time of sale, upon their delivering to him the original mortgage and all other securities for the mortgage debt.

Books of mortgages to be deposited in clerk's office.] It is the duty of the commissioners to deposit their books of mortgages in the clerk's office of the respective counties for which they were appointed, there to remain at all times, except when they are in actual session for the despatch of their official duties.

Form of mortgage.] The mortgages to be taken by the commissioners must be in the form following, to wit: "This indenture, made the day of in the year of our Lord between of in the county of of the first part, and the commissioners for loaning certain moneys of the United States, of the county of the second part, witnesseth: That the said for and in consideration of the sum of to well and truly paid by the commissioners aforesaid, hath granted, bargained, sold, aliened, released, enfeoffed and confirmed, and by these presents do grant, bargain, sell, alien, release, enfeoff and confirm, to the commissioners aforesaid, and their successors and assigns for ever, all that together with all the hereditaments and appurtenances to the same belonging, or in any wise appertaining, and all the estate, right, title, interest, claim and demand whatsoever of the said of, in and to the above bargained premises, and every part thereof: To have and to hold the above bargained premises, and every part thereof, with the appurtenances, unto the said commissioners, and their

successors and assigns forever, and for the uses and purposes mentioned in an act of the Legislature of the State of New-York, entitled 'An act authorizing a loan of certain moneys belonging to the United States, deposited with the State of New-York for safe keeping:' Provided always, and these presents are upon this condition, that if the said

heirs, executors, administrators or assigns shall pay, or cause to be paid, to the said commissioners, the interest of the said sum of at the rate of seven per cent per annum, on the first Tuesday of October, yearly and every year, and shall also pay to the said commissioners, the said principal sum of with all the interest then due for the same, on the day of unless the same shall be by them sooner demanded; and shall also pay the said principal moneys if sooner demanded, the one-half part thereof after a previous notice of one year, and the remainder after a previous notice of two years, then the above grant, bargain and sale, and every part thereof, shall be void; but if the failure be made in any of the payments above mentioned, then the above bargain and sale is to remain in full force and virtue, and the said for heirs and assigns, hereby agree to be absolutely barred of and from all equity of redemption of the premises after the expiration of twenty-two days after such failure; and the said for heirs, executors, administrators and assigns, hereby covenant, grant and agree, to and with the said commissioners, and their successors, well and truly to pay to them the interest of the said sum of at the rate aforesaid, annually, on the first Tues-

day of October in every year, and the said principal sum of with all the interest then due thereon, on the day of unless the same shall be by them sooner demanded; and if the said principal moneys shall be sooner demanded, then to pay the same to the said commissioners, or their successors, the one-half after a previous notice of one year, and the remainder after a previous notice of two years; and that at the time of sealing and delivering of these presents, the said lawfully seised of the above bargained premises, of a good, sure, perfect, absolute and indefeasible estate of inheritance, and that the same now are free and clear of and from all former and other gifts, grants, bargains, sales, liens, judgments, recognizances, dowers, rights of dower, and other incumbrances whatsoever; and also, that the above bargained premises, upon the sale thereof, pursuant to the directions of the said act, will yield the principal and interest aforesaid, remaining unpaid at the time of such sale, and until the first Tuesday of October next after such sale, together with the charges of such sale. In witness whereof, the said ha hereunto set hand and seal, the day and year above written. Sealed and delivered in the presence of us."

Form of deed to be given by commissioners.] The deeds to be given by the commissioners for any lands sold by them by virtue of this act, shall be in the form following to wit: "This indenture, made the day of in the year of our Lord one thousand eight hundred and between the commissioners for loaning certain moneys of the United States

of the county of of the first part, and of the second part, witnesseth: That the said commissioners, for and in consideration of the sum of to them in hand paid by the said whereof they acknowledge the receipt and discharge the said heirs, executors and administrators thereof forever, have, pursuant to a law of the state of New-York, entitled 'An act authorising a loan of certain moneys belonging to the United States, deposited with the state of New-York for safe keeping,' granted, bargained, sold, released, enfeoffed and confirmed, and by these presents do grant, bargain, sell, release, enfeoff and confirm unto heirs, and assigns, all that together with all the hereditaments and appurtenances whatsoever to the same belonging, or in any wise appertaining, and all the estate, right, title, interest, claim and demand whatsoever of the said commissioners, and their successors, to the above bargained premises, and every part thereof, to have and to hold the above bargained premises and every part thereof, with the appurtenances to the said heirs and assigns forever. In witness whereof, being the said commissioners, have hereunto set their hands and seals, the day and year above written. Sealed and delivered in the presence of ." To which deed the commissioners shall affix their seals and respectively subscribe their names in presence of two witnesses.

Commissioners refusing to give additional security, to be reported to governor.] If the commissioners neglect or refuse for the space of ten days after the receipt of notice, to give such additional security as may

at any time be required by the supervisors of the county for which such commissioner was appointed, or by the comptroller, such supervisors, or the comptroller, as the case may be, will report the fact, together with their reasons for requiring such additional security, to the governor, in order to his removal.

Moneys received by commissioners for annual interest to be deposited to credit of state treasurer.] The moneys which may from time to time be paid to the commissioners, on account of interest, after deducting therefrom the per centage allowed for their services, shall in all cases where it can, in the opinion of the comptroller, conveniently be done, be deposited in some safe bank to the credit of the state treasurer, and a certificate of the deposit must without delay be transmitted to the comptroller by the commissioners.

Mortgages in the city of New-York.] Loan mortgages in the city and county of New-York, must be deposited in the office of the register, and may not be removed until fully paid and satisfied. *Laws of 1851, chap. 286.*

Money may be reloaned.] By the act of 1845, it was provided that when any *part* of the money loaned out by the commissioners is paid in, the same may be reloaned in the same manner as when the whole of the principal is paid in to them. *Laws of 1845, chap. 267. 1 R. S. 580, 4th ed.*

The act of 1847 provided for the opening of separate accounts with purchasers of mortgaged premises.

New accounts to be opened for parts of premises.] When-

ever any person owning premises subject to a mortgage given to the commissioners of any county of this state, sells any portion of the premises, it is the duty of the commissioners on application to them for that purpose, with the assent of the mortgagor, to open an account against any purchaser for the proportionate part of the moneys secured by said mortgage on the portion of the premises purchased by him; and thereafter to give credit for the payment on such portion whenever the person making such payment shall so require.

Restriction.] No such account can be opened for a less sum than one hundred dollars: nor unless the remainder of the mortgaged premises exclusive of all buildings thereon, and of the value of the rent in perpetuity if any, charged thereon, shall appear, to the satisfaction of the commissioners, to be worth double the amount of the residue of the mortgage debt and interest, not included in the new account.

Part when to be discharged from mortgage.] Whenever any part for which a separate account has been opened, has been fully paid, the commissioners must discharge the same from the mortgage, and such discharge duly acknowledged or proved, will be sufficient to authorise the county clerk to enter a minute of such payment on the margin of the registry of such mortgage. This is not to be construed to affect or impair the obligation or liability of any mortgagor under or by virtue of any covenant contained in such mortgage.

Report to be made to supervisors.] The commission-

ers must make a special report of their proceedings in each case under the act of 1847, to the board of supervisors, at their first annual session after the new account is opened.

Comptroller to prescribe regulations.] The comptroller prescribes regulations for opening new accounts by the commissioners, similar to those adopted in the comptroller's office; and the commissioners give to the purchaser of any portion of the premises mortgaged to them, a certificate containing a description of the premises set off, the amount payable thereon, and setting forth that when the payment is made, the original mortgage will be cancelled in respect to the premises described in the certificate. *Laws of 1847, chap. 476, p. 680. 1 R. S. 581, 4th ed.*

By the laws of 1850, chap. 337, p. 732, it is provided as follows:

Bonds and mortgages of loans of 1798 and 1808 to be transferred to commissioners for loaning U. S. D. Fund.] “§ 1. It shall be the duty of the loan commissioners in the several counties in this state, and they are hereby authorized to transfer and deliver to ‘The commissioners for loaning certain moneys of the United States,’ in the same county, as early as practicable after the first Tuesday in May next, all the mortgages which shall then remain in the hands of said loan commissioners, belonging to the loan of one thousand seven hundred and ninety-two, or the loan of one thousand eight hundred and eight, which transfer shall be made under the direction of the comptroller, in the manner and for the purposes

prescribed by this act. But no such transfer shall be made unless the owner or owners of the premises included in such mortgage shall have assented thereto in writing.

Bond of mortgagor to be required.] “§ 2. Before accepting the transfer of any mortgages specified in the preceding section, the commissioners for loaning certain moneys of the United States, shall require a bond to be executed to them by the original mortgagor, or his grantee or grantees, or some person of approved responsibility in his or their behalf, conditioned that the moneys due on said mortgage, and the interest thereon, shall be paid to said commissioners, or their successors in office, at the same time or times and in the same manner, and that said mortgage shall be subject to the same conditions, proceedings and liabilities, as if said mortgage had been originally executed to the commissioners for loaning certain moneys of the United States, under and in pursuance of the act entitled “An act authorising a loan of certain moneys belonging to the United States, deposited with the State of New-York for safe keeping,” passed April 4, 1837, and the several acts amendatory thereof.

Condition of transfer.] “§ 3. No such mortgage shall be transferred, as herein provided, unless the interest thereon shall have been paid to the first Tuesday of May next; and in case the owner or owners of the premises described in any mortgage, shall refuse to assent to such transfer, or shall refuse or neglect to execute, or cause to be executed and delivered to the commissioners for loan-

ing certain moneys of the United States, a satisfactory bond, as prescribed by the second section of this act; or if the said commissioners shall be of opinion that the premises described in such mortgage, are not sufficient security for the amount due thereon, the loan commissioners shall proceed to foreclose such mortgage in the manner prescribed by the act passed March 14, 1792, and the acts amendatory thereof, if such mortgage shall belong to the loan of 1792, or in the manner prescribed by the act passed April 11, 1808, and the acts amendatory thereof, if such mortgage shall belong to the loan of 1808; and said loan commissioners shall immediately account to the comptroller for the moneys arising from such foreclosure.

Accounts of commissioners how settled.] “ § 4. On receiving from the said loan commissioners a transfer of any of said mortgages, in the manner herein specified, the commissioners for loaning certain moneys of the United States, shall thereupon make and deliver to said loan commissioners a draft on the treasurer of this state, in such form as the comptroller shall prescribe, for the amount due and unpaid on such mortgage or mortgages, which draft shall be transmitted to the comptroller by the said loan commissioners in settlement of their accounts with the state, and on receiving such draft or drafts, the comptroller shall cause the amount thereof to be transferred from the capital of the United States deposit fund to the capital of the common school fund.

Transferred mortgages to be a part of the U. S. D. Fund.] “ § 5. The mortgages which shall be trans-

ferred by the loan commissioners as aforesaid to the commissioners for loaning certain moneys of the United States, shall form a part of the capital of the United States deposit fund, and the said commissioners for loaning certain moneys of the United States, shall exercise the same powers in relation to such mortgages, in the collection of principal and interest thereon, and in proceedings in case of default, and shall receive the same compensation therefor as if said mortgages had been originally executed to the United States deposit fund, under and in pursuance of the act passed April 4, 1837, and the several acts amendatory thereof.

Commissioners to pay into treasury money in their hands, and deliver books and papers to commissioners of U. S. D. Fund.] “§ 6. After making the transfers authorized and directed by this act, the loan commissioners shall proceed to settle their accounts with the comptroller, in respect to the loans of 1792, and 1808, and shall pay into the state treasury all balances remaining in their hands, without unreasonable delay; and they shall also deliver to the commissioners loaning certain moneys of the United States, all books, papers, titles and accounts now in their hands, belonging or in any way relating to the said loans of 1792, and 1808, or either of them. And from and after the settlement and approval of their accounts by the comptroller, the said offices of loan commissioners, of the loans of 1792 and 1808, shall cease to exist.”

“§ 7. The comptroller is authorized to allow to the loan commissioners appointed under the said

act of 1792 and 1808, such additional compensation as he shall deem just and reasonable for the extra services imposed upon them by this act."

Income, how expended.] The income derived from the investment of the moneys above mentioned, that is to say from the moneys known as the United States deposit fund, is expended for the purpose of education. 1 R. S. 583, 4th ed. *Laws of* 1838, chap. 237.

Responsible for false statements as to title.] A commissioner selling under a power in a mortgage by virtue of his office, is responsible to the purchaser for a fraudulent representation as to the title, made with intent to deceive and defraud. *Culver v. Avery*, 7 Wend. 380.

When commissioners become seized of the lands mortgaged.] On the failure of the borrower to pay the annual interest at the time prescribed, the commissioners become seized of the lands mortgaged, so that the mortgagor (not having paid the debt and costs after default and before the sale) cannot maintain ejectment to obtain possession. *Olmstead v. Elder*, 2 Sand. 325.

Evidence of default.] The production of the mortgage having no entry upon it of the payment of interest, and the efflux of time, are sufficient to establish presumptively the default in the payment of the annual interest. *Id.*

Both commissioners must be present at sale.] A sale of mortgaged lands, under the foregoing provisions, made by one of the commissioners, is irregular and void. Both commissioners must be present and concur in the sale. *Powell v. Tuttle*, 3d Coms. 396.

1 *Selden*, 144. Should both commissioners subsequently unite in a conveyance to the purchaser, it would not render that sale valid. *Id.*

One in possession under a deed executed by both commissioners in pursuance of a sale made by one only, the deed being void, is a mere intruder. *Olmstead v. Elder*, 1 *Selden*, 144.

CHAPTER XVI.

OF SUPERINTENDENTS OF THE POOR.

The superintendent of the poor is a county officer. Any person holding the office of supervisor or county treasurer is ineligible to this office. *Laws of 1829, chap. 352. 2 R. S. 12, 4th ed.*

Number.] There are usually three in each county. The board of supervisors in each county, except those where there are local laws to the contrary, at any annual meeting, may direct by resolution that thereafter only one superintendent shall be elected, in which case he will hold his office for three years, but in those counties where no such resolution is passed, *three* must be elected. *Laws of 1847, chap. 498.*

Majority may act.] A majority of the persons elected are competent to act and to execute any powers vested in the board of superintendents. 1 *R. S. 12, 4th ed.*

When to be elected.] Superintendent or superintendents, must be elected at the general election in November, in the same manner that other county officers are chosen.

Tenure of office and classification.] In counties where only one superintendent of the poor is chosen, he holds his office for three years; but in counties where three are chosen, one of the superintendents so elected, holds his office for one year, one for two years, and one for three years. And the clerk of the county will, on the first day of January, after such election, determine by lot which of said superintendents shall hold his office for one year, which for two, and which for three years. And annually, thereafter, there must be elected one superintendent, who holds his office for three years. *Laws of 1847, chap. 498.*

Vacancies, how filled.] Boards of supervisors appoint county superintendents of the poor, or county treasurers, to fill vacancies which may happen in such offices. *Sec. 4 of same chapter.*

Vacancies temporarily filled.] In case of a vacancy in the office of superintendent of the poor by death, refusal to serve, or otherwise, the first judge of the county in which such vacancy may be, must appoint some proper person to fill the vacancy, -who will hold and exercise the duties of the office until the next annual meeting of the board of supervisors of such county, which appointment must be in writing, signed by the judge, and filed in the office of the clerk of the county.

Bond to be executed.] The superintendent, within ten days after his election, must give a bond to the supervisors, with two or more sufficient sureties, to be approved by the board of supervisors, and in such sum as they shall direct, conditioned that he will faithfully execute the duties of his

office, and pay according to law all moneys which shall come to his hands as superintendent of the poor; and render a just and true account thereof to the board of supervisors. *Sec. 1, of chap. 327, Laws of 1848. (Form of bond, Appendix, No. 79.)*

Where filed, and by whom approved.] Such bond, with the approbation of the board of supervisors endorsed thereon by their clerk, must be filed in the office of the county clerk. *Sec. 2, of same chap.*

When to enter on their duties.] Superintendents of the poor enter on the duties of their office on the first day of January next after their election. *Chap. 116, of 1849.*

When to take oath of office and file bond.] They have until the first day of January next after the election to take the oath of office and file their official bond. *Sec. 4, of chap. 12, of 1850.*

Supervisors to fix penalty. County clerk to approve bond.] It shall be the duty of the board of supervisors of the several counties to fix the penalty of the bonds of superintendents of the poor; and the sureties may be approved by the county clerk, in the recess of the board of supervisors. *Sec. 5, of same chapter.*

To be a corporation; powers and duties.] They are by statute a corporation by the name of the superintendents of the poor of the county for which they are chosen, and possess the usual powers of a corporation for public purposes; they meet as often as the supervisors of the county may direct, at the county poor-house, if there be one, or at the place of holding courts in their county, or at one of the places of holding

courts, if there be more than one, and at such other times and places as they shall think expedient.

General care of the poor.] They have a general superintendence and care of the county poor who may be in their respective counties; and have power, and it is their duty:

To provide places for poor.] 1. To provide suitable places for the keeping of such poor, when directed by the supervisors of any county where houses for that purpose have not been erected by the county; and for that purpose, to rent tenements, and land not exceeding fifty acres, and to cause the poor of the county to be maintained in such places.

To make rules.] 2. To establish and ordain prudential rules, regulations and by-laws, for the government and good order of such places, and of the county poor houses, and for the employment, relief, management and government of the persons therein placed. Such rules and regulations will not be valid until sanctioned by the county court of such county, in writing.

To employ keepers.] 3. To employ suitable persons to be keepers of such houses or places, and all necessary officers and servants, and to vest such powers in them for the government of such houses as may be necessary, reserving to the paupers who may be placed under the care of such keepers the right of appeal to the superintendents.

To purchase materials.] 4. In the counties where a poor house is erected or other place provided for the poor, to purchase the furniture, implements, and materials that may be necessary from time to

time for the maintenance of the poor therein, and their employment in labor or manufactures, and to sell and dispose of the proceeds of such labor as they may deem expedient.

Allowance for bringing paupers.] 5. To prescribe the rate of allowance to be made to any persons for bringing paupers to the county poor-house or place provided for the poor, subject to such alterations as the board of supervisors may, by a general resolution, make.

Payment of such allowance.] 6. To authorise the keepers of such houses or places, to certify the amount due to any person for bringing such paupers; which amount must be paid by the county treasurer, on the production of such certificate, countersigned and allowed by any two superintendents.

To decide disputes respecting settlements.] 7. To decide any disputes that may arise concerning the settlement of any poor person, summarily upon a hearing of the parties; and for that purpose, to issue subpoenas to compel the attendance of witnesses, and to administer oaths to them in the same manner, and with the like power to enforce such process as is given to justices of the peace in any matter cognizable by them; their decisions must be filed in the office of the county clerk within thirty days after they are made, and are conclusive and final upon all parties interested. (*Form of Subpoena, Appendix, No. 80.*

To direct and commence suits.] 8. To direct the commencement of suits by any overseers of the poor, who may be entitled to prosecute for any

penalties, or upon any recognizances, bonds, or securities taken for the indemnity of any town or of the county; and in case of the neglect of any such overseer, to commence and conduct such suit, without the authority of such overseers, in their names.

To draw on county treasurer.] 9. To draw from time to time on the county treasurer for all necessary expenses incurred in the discharge of their duties, which drafts must be paid by him out of the moneys placed in his hands for the support of the poor.

To account.] 10. To render to the board of supervisors of their county, at their annual meeting, an account of all moneys received and expended by them, or under their direction, and of all their proceedings.

To pay over moneys.] 11. To pay over all moneys remaining in their hands, within fifteen days after the expiration of their office, to the county treasurer, or to their successors.

Physician and keeper of poor-house to be appointed.] In each county where there is more than one superintendent of the poor, and where there is a poor-house, the superintendents appoint a keeper and physician for the poor-house. *Chap. 532, of 1851.*

Children to be taught.] They are required to cause all county and town paupers, over the age of five and under the age of sixteen years, in the poor-houses, to be taught and educated, in the same manner as children are now taught in the common schools, at least one-fourth part of the time

such paupers remain there. *Sec. 4, of chap. 277, 1831.*

Expense.] The expense of teaching and educating such paupers must be paid by the counties and towns, in the same manner as other contingent charges are paid for the support of said paupers. *Sec. 5, of same chap.*

County poor-houses.] The board of supervisors of any county in which a county poor-house is not already erected, may at any annual or special meeting, determine to erect such house for the reception of the poor of their county; and upon filing such determination with the clerk of the county, they may direct the superintendents of the poor of such county to purchase one or more tracts of land, not exceeding two hundred acres, and to erect thereon one or more suitable buildings for such purpose. To defray the expenses of such purchase and buildings, the board may raise by tax on the real and personal estate of the inhabitants of the same county, a sum not exceeding seven thousand dollars, by such instalments and at such times as they may judge expedient. The tax must be raised, assessed and collected in the same manner as the other county charges, and be paid by the county treasurer to the superintendents of the poor of the county, to be applied in defraying the expenses above mentioned.

Superintendents of county poor houses.] The superintendents of county poor houses, are superintendents of the poor of their counties respectively, and possess all the powers and are subject to all the

regulations hereinbefore specified in relation to such superintendents.

Moneys received by overseers.] All moneys collected by overseers of the poor of any town in a county where the poor are all a county charge, from the relatives of any poor person bound to contribute to his support; or from the sale of any personal property, or the rents and profits of the real property of any person who absconds, leaving a wife or children; or received for any fines, penalties or forfeitures, which by law are directed to be applied to the support of the poor; or collected on any bond or other security that may be given for the benefit or indemnity of any town, or of the overseers or inhabitants of such town; and all other moneys which may be received by such overseers in their official capacity, must be by them paid over within thirty days after the receipt of the same, to the county treasurer, for the benefit of the poor.

Penalty.] If not so paid, the same may be recovered in an action to be brought by and in the name of the county treasurer, with interest at the rate of ten dollars on the hundred, for a year, from the time the same should have been paid.

Poor to be a county charge in certain counties.] In the counties of Warren, Washington, Saratoga and Genesee, poor persons entitled to support as above-mentioned, must be maintained at the expense of the said counties respectively; and all costs and charges attending the examinations, conveyance, support, and necessary expenses of paupers within the said counties respectively, is a charge upon

those counties, without reference to the number or expense of paupers which may be sent to the poor house of said counties, from or by any of the towns therein. The charges and expenses must be reported by the superintendents of the poor of those counties to the boards of supervisors therein respectively, and must be assessed and collected upon the taxable real and personal estate in those counties, in the same manner as other county charges.

As to what is deemed a settlement of a pauper see Chap. VII, pages 174, 176 and 217.

Proceedings to determine settlement of pauper.] When the overseers have served the notice mentioned at page 178, the superintendents convene pursuant to such notice, and proceed to hear and determine the controversy, and award costs not exceeding ten dollars to the prevailing party, which may be recovered in any action before a court of competent jurisdiction. The decision of the superintendents is final and conclusive.

Proceedings to determine who are county paupers.] The support of any pauper cannot be charged to the county without the sanction of the superintendents. If a pauper be sent to the county poor-house, or place provided for the poor, as a county pauper, the superintendents in those counties where the respective towns are required to support their own poor, must immediately inquire into the fact, and if they are of opinion that such pauper has a legal settlement in any town of the county, they are required, within thirty days after such pauper has been received, to give notice to the overseers of

the poor of the town to which such pauper belongs, that the expenses of his support will be charged to such town unless the overseers, within such time as the superintendents may appoint, not less than twenty days thereafter, show that such town ought not to be so charged. And on the application of the overseers, the superintendents must re-examine the matter and take testimony in relation thereto, and finally decide the question, which decision will be conclusive.

Where there are no poor houses.] For the proceedings in those counties where there are no poor houses, see pages 180 and 181, Chap. VII.

Relief to paupers in counties having poor houses.] For the proceedings in those counties where there are poor houses, see page 181.

Expense of removal and temporary support.] In case of removal as mentioned at page 181, the expense must be paid on the certificate of the keeper of the poor house, or other place, properly countersigned, at the rate that may have been prescribed by the superintendents; and the overseers will be allowed such sum as may have been necessarily paid out or contracted to be paid for the relief or support of such pauper, previous to the removal, as the superintendent shall judge was reasonably expended while it was improper to remove such pauper, which sum must be paid by the county treasurer, on the order of the superintendents, and be charged to the county, if such pauper be a county charge, or to the town sending him, if not a county charge.

How supported, and when to be discharged.] The person removed must be received by the superinten-

dents, or their agents, and supported and relieved in the county poor house, or such other place as may be provided, under the direction of the superintendents, until it appears to them that such person is able to work and maintain himself, when the superintendents may in their discretion discharge him.

County paupers in counties having no poor-houses.] For proceedings in those counties having no poor houses, see page 184.

For the proceedings of the superintendents in preparing a statement of these accounts to go before the board of supervisors, see page 185.

Expense of supporting county poor how defrayed.] The superintendents must annually present to the board of supervisors, at their annual meeting, an estimate of the sum, which in their opinion, will be necessary, during the ensuing year, for the support of the county poor; and the supervisors will cause such sum as they may deem necessary for that purpose to be assessed, levied and collected in the same manner as the other contingent expenses of the county, to be paid to the county treasurer, and to be by him kept as a separate fund, distinct from the other funds of the county.

Powers of county superintendents.] In those counties where all the poor are a charge upon the county, the superintendents of the poor are vested with the same powers, rights and authority, as are given to the overseers of the poor of any town, in respect to compelling relatives to maintain paupers, and in respect to the seizure of the property of any parent absconding and abandoning his family, and

are entitled to the like actions and remedies in their names, and must perform the duties required of overseers, and subject to the same obligations and control.

Accounts for county paupers, how settled.] The superintendents must audit and settle all accounts of overseers of the poor, justices of the peace, and all other persons, for services relating to the support, relief, or transportation of county paupers; and may from time to time, draw on the county treasurer for the amount of the accounts which they so audit and settle. *Sec. 1 of chap. 26, of 1832.*

Penalty for removing paupers, see page 189.

For proceedings to compel support of a pauper removed, see page 190.

Suit, when to be brought.] Upon the service of notice of denial, mentioned at page 190, the superintendents upon whom the same may be served, must within three months, commence a suit against the overseers of the poor of the town, or the county superintendents of the poor of the county, to whom the first notice was directed, or against their successors in office, for the expenses incurred in the support of such pauper, and must prosecute the same to effect; if they neglect to do so, they, their successors, and their county, will be forever precluded from all claim against the county or town to whose officers such first notice was directed, or any of their officers, for any expenses that may have been, or may be incurred for the support of such pauper.

Penalty on superintendents for neglect to render ac-

counts, &c.] Every superintendent who neglects to render any account, or statement, to the board of supervisors, as required, or to pay over any moneys within the time prescribed by law, forfeits two hundred and fifty dollars, to be sued for and recovered by and in the name of the county treasurer. The superintendents are also liable to an action, either jointly or severally, by the county treasurer, for all moneys which shall be in their hands after the time the same should have been paid over according to law, with interest thereon, at the rate of ten dollars upon the hundred for a year, from the time when the same should have been paid over.

As to when the superintendents may sue for the penalty for removing a pauper from without the state, see page 191.

Payment over of penalties, and their application.] Penalties when recovered, must be paid to the county treasurer, and by him credited to the town by whose officers they have been collected, if such town be liable for the support of its own poor, or to the county, when collected by the county superintendents; if not paid by the persons collecting the same, when demanded by the county treasurer, he may maintain an action therefor, in his name of office.

Idiots and lunatics.] In those counties where county poor houses may be established, the superintendents may provide for the support of paupers that may be idiots, or lunatics, out of such poor house, in such manner as will best promote the interests of the county and conduce to the comfort and recovery of such paupers.

Annual reports by county superintendents to secretary of state.] It is the duty of the superintendents of every county, during the month of December, in each year, to report to the secretary of state, in such form as he may direct, the number of paupers that have been relieved or supported in such county the preceding year, distinguishing the number of county paupers from the number of town paupers, if any; the whole expense of such support, specifying the amount paid for transportation of paupers, and any other items which do not compose any part of the actual expense of maintaining the paupers, and the allowance made to superintendents, overseers, justices, keepers and officers; the actual value of the labor of the paupers maintained, and the estimated amount saved in the expense of their support, in consequence of their labor.

Additional matter to be reported by superintendents.] In addition to such report the superintendents are now required in the month of December, in each year, to report to the secretary of state, in such form as he may direct, the sex and native country of every pauper who may have been relieved or supported by them during the year preceding the day on which such report is made, together with a statement of the causes, either direct or indirect, which have operated to render such person a pauper, so far as the same can be ascertained; together with such other items of information in respect to the character and condition of such paupers as the secretary of state may direct. *Sec. 1, of chap. 214, of 1842, as amended by chap. 100, of 1849.*

Penalty for neglect and for false report.] Should the

superintendent neglect or refuse to make his report, or be guilty of making a false report, he forfeits one hundred dollars. 2 *R. S.* 25, 4th ed.

Montgomery co.] Provision is made for the election of but one superintendent for the county of Montgomery. *Laws of 1844, chap.* 137. The board of supervisors in that county possess the sole power to appoint the keeper of the poor house. The duties of such keeper and of the superintendent in that county are defined at length in the laws of that year.

Wayne.] But one superintendent is elected in Wayne county, and the board of supervisors also possess the sole power in that county to elect the keeper of the poor house. For the duties of those officers in Wayne, see *Laws of 1845, chap.* 315.

County of Kings.] For the duties of the superintendents of the poor in the county of Kings, see *Laws of 1838, chap.* 305; *Laws of 1842, chap.* 257; *Laws of 1849, chap.* 395.

Herkimer county.] For the powers and duties of the superintendent in the county of Herkimer, see *Laws of 1850, chap.* 29.

Jefferson.] For the powers and duties of the superintendent in the county of Jefferson, see *Laws of 1852, chap.* 242. The office is not elective in that county, but filled by an appointment from the board of supervisors.

Onondaga.] The superintendents of the poor of the county of Onondaga are constituted a board subordinate to the board of supervisors, to assist in auditing the poor expenses of that county, and are

under the direction and control of the supervisors. *Laws of 1852, chap. 231.*

Lunatics may be sent to New-York asylum.] The superintendents of any county, to which any person may be chargeable who is or shall become a lunatic, may send such person to the lunatic asylum in the city of New-York, by an order under their hands. 2 R. S. 38, 4th ed.

Expense thereof, and of lunatic's support.] The expense of sending any lunatic to the asylum at New-York, and of supporting him there, must be defrayed by the county or town to which he may be chargeable; if chargeable to a county, or to any town whose poor moneys are required to be paid into the county treasury, such expense must be paid by the county treasurer, out of the funds appropriated to the support of the poor belonging to such county or town, after being allowed and certified by the county superintendents. If such lunatic be chargeable to a town whose poor moneys are not required to be paid into the county treasury, such expense must be paid by the overseers of the poor.

Powers of county superintendents.] The superintendents have all the powers and authority given to the overseers of the poor of any town, in respect to lunatics.

Number of patients allowed to each county.] Each county may, at all times, have one indigent insane patient in the state asylum, whose disease, at the time of admission, was a first attack and did not exceed six months; and such further number of

either old or recent cases as the asylum can accommodate, in proportion to the insane population of the county. The patients must be designated by the superintendents of the poor, or, if the county has no such superintendents, by the county judge. 2 R. S. 45, 4th ed.

Counties to support such persons after six months.] When an insane person in indigent circumstances has been sent to the asylum by his friends, who have paid his bills therein for six months, if the superintendent certify that he is a fit patient and likely to be benefited by remaining in the institution, the supervisors of the county of his residence are authorized and required, upon an application under oath in his behalf, to raise a sum of money sufficient to defray the expenses of his remaining there another year, and pay the same to the treasurer of the asylum; and they must repeat the same for two succeeding years upon like application and the production of a new certificate each year, of like import, from the superintendent. 2 R. S. 46, 4th ed.

Certain patients to be supported by counties.] The expenses of clothing and maintaining in the asylum a patient who has been received upon the order of any court, or officer, must be paid by the county from which he was sent to the asylum. The treasurer of the county is authorized and directed to pay to the treasurer of the asylum the bills for such clothing and maintenance, as they become due and payable, according to the by-laws of the asylum, upon the order of the steward; and the supervisors of said county must annually levy and raise

the amount of such bills, and such further sum as will probably cover all similar bills for one year in advance. The county, however, has the right to require any individual, town, city or county, that is legally liable for the support of such patient, to reimburse the amount of such bills, with interest from the day of paying the same. *Laws of 1842, chap. 135.*

Expense of removing certain patients from the asylum, how paid.] Whenever the managers order a patient removed from the asylum to the poor-house of the county whence he came, the superintendents of the poor of such county must audit and pay the actual and reasonable expenses of such removal, as part of the contingent expenses of the poor house; but if any town, or person, be legally liable for the support of such patient, the amount of such expenses may be recovered for the use of the county by such superintendents. If the superintendents neglect or refuse to pay such expenses on demand, the treasurer of the asylum may pay the same and charge the amount to the said county; and the treasurer of such county is authorized to pay the same, with interest, after thirty days, and the supervisors of such county must levy and raise the amount as other county charges. *Sec. 38, of same chap.*

Indigent persons not paupers, when to be admitted.] No person in indigent circumstances, not a pauper, can be admitted into the asylum on the certificate of a county judge, made under the provisions of the twenty-sixth section of the act to organize the State Lunatic Asylum, passed April 7, 1842, unless

such person has become insane within one year next prior to the granting of such certificate by the county judge; and it is the duty of such judge, when an application is made to him pursuant to said twenty-sixth section, to cause such reasonable notice thereof, and of the time and place of hearing the same, to be given to one of the superintendents of the poor of the county chargeable with the expense of supporting such person in the asylum, if admitted, or if such expense is chargeable to a town or city, then to an overseer of the poor of such town or city as he may judge reasonable under the circumstances; and he will then proceed to inquire as to the time when such person became insane, and will in addition to the requirements of said twenty-sixth section, state in his certificate that satisfactory proof has been adduced before him that such person became insane within a year next prior to the date of his certificate. On granting such certificate, the judge may in his discretion, require the friends of the patient to give security to the superintendent of the poor of the county, to remove the patient from the asylum at the end of two years, in case he does not sooner recover. When a patient who is admitted into the asylum on the certificate of a county judge, given pursuant to the twenty-sixth section of said act, has remained in the asylum two years, and has not recovered, the superintendent of the asylum, will send notice by mail, to the overseer of the poor of the town where the patient resided at the time of his admission into the asylum, or to the county judge of the county from which he was

sent, that such patient has remained two years in the asylum and has not recovered, and that he should be removed from the asylum, and that in case he is not removed, the expense of his support will be chargeable to the county until he is so removed, and then such expense must be chargeable to the county accordingly. But in every case where a patient admitted into the asylum, pursuant to the provisions of the twenty-sixth section of said act, shall have remained there two years, and has not recovered, the managers of the asylum, may, in their discretion, cause such patient to be returned to the county from which he came, and charge the expense of such removal to the county. *Laws of 1850, chap. 282, sec. 2.*

Lunatic may be sent to county poor house or asylum in discretion of county judge.] The county judge of each of the counties of this state, is authorized to send all such indigent lunatics, belonging to each county, as may be brought before him, either to the county poor house or to the state lunatic asylum, as in his judgment may be for the best interests of all concerned. *Chap. 446, of 1851.*

The duty of superintendents of the poor in regard to bastards, is pointed out at pages 200, 201, 209, 212, 213, 214, 217 and 218.

Compromise in other counties.] Superintendents have power to make such compromise and arrangements with the putative fathers of any bastard children, within their jurisdiction, relative to the support of such children, as they may deem equitable and just; and, thereupon, to discharge such

putative father from all liability for the support of such bastards. *Sec. 2, of chap. 26, of 1832.*

Penalty for neglect of duty under bastardy act.] Any superintendent and any overseer of the poor, whose duty it is to provide for the support of any bastard and the sustenance of its mother, who neglects to perform such duty, will be deemed guilty of a misdemeanor; and, on conviction, will be liable to a fine not exceeding two hundred and fifty dollars, or to imprisonment, not exceeding one year, or to both. *2 R. S. 67, 4th ed.*

Penalty on constables neglecting to deliver over bonds received by them.] Every constable or other officer, to whom any bond of the putative father of a bastard, or of a child likely to be born a bastard, taken out of the county where a warrant was issued, is delivered, who neglects or refuses to deliver the same to the justice who issued such warrant, within fifteen days after the receipt of the same, forfeits the sum of twenty-five dollars, to be sued for and recovered by and in the name of any overseers of the poor, or county superintendents, at whose instance the warrant was issued. *2 R. S. 67, 4th ed.*

When county superintendents may bind out infants.] The county superintendents may bind out any child, under the ages specified at page 220, who shall be sent to any county poor-house, or who is chargeable, or whose parent or parents are chargeable to such county, to be clerks, apprentices or servants, until such child, if a male, shall be twenty-one years old, or if a female, shall be eighteen years old, which binding shall be as effectual as if such child had bound himself with the consent

of his father. 2 R. S. 339, 4th ed. For the clauses to be inserted in such indentures, see page 221.

Actions by them.] Actions may be brought by county superintendents of the poor, upon any contract lawfully made with them or their predecessors, in their official character, to enforce any liability, or any duty enjoined by law, to such officers or the body which they represent; to recover any penalties or forfeitures given to such officers or the bodies whom they represent; and to recover damages for any injuries done to the property or rights of such officers, or of the bodies represented by them. 4th Hill, 136. 18th John. 407. 1 Cow. 260.

On contracts, etc., with their predecessors.] Such actions may be brought by such officers in the name of their respective offices, notwithstanding the contract or obligation on which the same is founded may have been made with or to any predecessors of such officers, in their individual names or otherwise, and notwithstanding any right of action may have accrued previous to the time when the officers commencing such suit entered upon the execution of the duties of their office. 2 R. S. 715, 4th ed.

When not to be held to bail.] In actions against superintendents and overseers of the poor, to enforce any liability of the county or town, or to recover any sum of money, damages or expenses, which such county or town may be liable to pay, the defendants may not be held to bail. 2 R. S. 715, 4th ed.

On contracts of predecessors.] When any contract has been entered into, or any liability incurred, by

or in behalf of any county or town, by any officer thereof within the scope of his authority, the same remedies may be had against any successor of such officer, in his official character, as might have been had against such officer if he had continued in office. *Id.*

When execution not to issue.] When a judgment has been recovered against the county superintendents of the poor of any county, no execution can be awarded or issued upon such judgment, unless the same shall have been rendered for the costs of a suit commenced by them in their individual names; in which cases, such costs must be collected of the plaintiffs individually, and the amount thereof allowed to them in their account of official expenditures, by the board authorized to audit such accounts, if such suit appear to have been necessarily commenced in good faith. 2 R. S. 716, 4th ed.

May sue as a corporation.] County superintendents of the poor are a corporation, 1 R. S. 785, sec. 18, and may sue in their corporate name. They may also sue in their individual names, with the addition of their name of office, for any injuries done to the property or rights of such officers, or of the bodies represented by them; 2 R. S. 569, secs. 106, 107; and they are a proper body to bring suit for injuries done to property provided for the use of the poor of the county. *Van Keuren v. Johnston*, 3 Den. 183. Superintendents of the poor of a county suing the commissioners of excise of a town, for the penalty of fifty dollars, for not paying over the excise money to the county treasurer, 1 R. S. 787,

sec. 23, must prove that the distinction between town and county poor has been abolished by a resolution of the board of supervisors, and the due filing of a copy with the county clerk and previous payments of excise money to the treasurer by the defendants, does not of itself prove it, but it is not necessary to show that the clerk of the board of supervisors had served copies of the resolutions on the clerks of the several towns. *Thompson v. Smith*, 2 Den. 177.

When liable for the services of a justice.] Superintendents of the poor are not liable for official services of a justice, in matters relating to county paupers, though rendered at their request. *Vedder v. The Superintendents of the Poor of Schenectady County*, 5 Den. 564.

What accounts not bound to audit.] Superintendents are not bound to audit the accounts of physicians and others, for services rendered to county paupers by request of the overseers of the poor of the several towns; and this, though the services were rendered in pursuance of orders for temporary relief.

It is the duty of the overseers to adjust such accounts and charge them in their bills against the county. *Green and Brown, ex parte*, 4th Hill, 558.

The employment of a physician by the superintendents of the poor of a county, does not supersede the rights of the overseers of the several towns to employ other physicians to attend county paupers entitled to temporary relief. *Semle, per Cowen, J.*, 4 Hill, 528.

When action will not lie.] An action cannot be maintained against the superintendents of the

poor upon an account for services relating to the support of county paupers.

Should the superintendents refuse to audit such an account, the proper remedy is by *certiorari*. *Semble, per Whittlesey, J., 5 Den. 564.*

Compensation.] The superintendents are allowed such sum for their actual attendance and services, as the board of supervisors of their county may deem reasonable.

CHAPTER XVII.

OF THE COUNTY CLERK.

How elected and term of office.] The clerk of the county is chosen by the electors of the county once every three years, and as often as vacancies may happen. He must reside in the county for which he is chosen. When elected at a general election, he commences his duties on the first day of January thereafter.

Oath of office.] Within fifteen days after notice of his election or appointment, he must take the constitutional oath, (*form, Appendix, No. 1,*) and deposit the same in the county clerk's office of his county. 1 R. S. 330, 4th ed.

Clerk of courts.] He is ex-officio clerk of all the courts in his county, and keeps the "county seal," which is his official seal in all cases. His duty respecting courts is pointed out at length in the course of this chapter.

Custody of books, etc.] He is entitled to the custody of all the books, records, deeds, parchments,

maps and papers deposited or kept in his office, and he must from time to time carefully attend to the arrangement and preservation of the same. 1 *R. S.* 687, 4th ed.

To provide books for records.] The clerk at the expense of the county, must provide proper books for the recording of deeds, mortgages, or other conveyances acknowledged and proved according to law; and for the recording of all other papers, documents or matters required by law to be recorded in his office. He must also receive and file all papers and documents directed to be filed in his office. 1 *R. S.* 687, 4th ed. Further directions will be given in another place in this chapter respecting the form and mode of keeping such books.

Where to keep his office.] The clerk's office in those counties where buildings have been erected expressly for that purpose by law, must be kept in such offices, and in all the other counties except those in the counties of New-York, Westchester, Suffolk, Rockland and Queens, must be kept within one mile of the court house in such counties.

In the counties of Westchester, Suffolk, Rockland and Queens, the office will be kept in such places as may be designated by the board of supervisors of those counties. 1 *R. S.* 688, 4th ed.

Deputy.] The clerk must appoint some proper person to be his deputy, who will hold his office during the pleasure of the clerk. The clerk must at all times have a deputy. Such appointments must be in writing under the hand and seal of the clerk, and must be recorded in the clerk's office. 1 *R. S.* 688, 4th ed.

Oath of deputy.] The deputy, before he enters on the duties of his office, must take the constitutional oath. (*Form, Appendix, No. 1.*)

Powers of deputy.] When the clerk is absent from the county or from his office, from any cause, the deputy may perform all the duties appertaining to the office of clerk, except that of deciding upon the sufficiency of the security of any officer. 1 R. S. 688, 4th ed.

Whenever the office of clerk becomes *vacant*, the deputy must perform all the duties and will be entitled to all the emoluments and liable to all the penalties appertaining to the office, until a new clerk is elected or appointed for such county and duly sworn. *Laws of 1830, chap. 320.* 1 R. S. 688, 4th ed. The authority of the *deputy* who discharges the duty of the office of the clerk in consequence of the *death* of his principal, *ceases* on the appointment by the governor of another person to execute the duties of the office, until the *vacancy* in the office of clerk be supplied by an election. *The People v. Fisher*, 24 Wend. 215.

Special deputy.] The clerk is authorised to appoint some suitable person as a special deputy, who will possess the same power and authority as the clerk. The business of the special deputy usually is to attend to all matters relating to the courts in the county.

The appointment of the special deputy must be in writing, and filed in the clerk's office. Such deputy, before he enters upon the duties of the office, must take the constitutional oath. He

holds his office during the pleasure of the clerk. *Laws of 1851, chap. 211. 1 R. S. 689, 4th ed.*

Notice to persons appointed.] Whenever a commission appointing an officer, or a writ superseding such appointment, is received by the clerk, it becomes his duty forthwith, at the expense of the State, to give notice thereof to every person named in such commission, or supersedeas.

To notify governor of neglect of officer to give bond.] The clerk should immediately give notice to the governor, whenever any officer who is required to execute a bond previous to entering on the duties of his office, or to renew the bond already given, neglects to execute or renew such bond; in the manner and within the time required by law. *1 R. S. 689, 4th ed.*

To notify governor of vacancies.] He must, on or before the 15th day of January in each year, notify the governor of all persons appointed to office in his county, who have during the previous year taken the oath of office, or given the bond required by law, and of all defaults in that regard, and also of all vacancies in his county in any civil office. *Id.*

Fees for such notices.] His fees for sending such notices to the governor will be audited by the comptroller and paid out of the treasury. *Id.*

To report to district attorney.] He must report to the district attorney of his county, all omissions on the part of town officers, to make such returns as are required by law to be made by town officers to county clerks. *Laws of 1832, chap. 109. 1 R. S. 689, 4th ed.*

To report religious societies.] On or before the first day of January in each year, he must report to the comptroller the names of all religious societies that have been incorporated in his county during the preceding year.

Certified copies of papers, when evidence.] Copies of all papers duly filed in his office, and transcripts from the books of records kept therein, certified by the clerk, with his seal of office affixed, is evidence in all courts in like manner as if the originals were produced. 1 R. S. 689, 4th ed.

Records, when not to be removed.] Neither records of real estates nor other records, whereof a transcript duly certified may by law be read in evidence, can be removed by virtue of any subpœna duces tecum, from the proper office in which such record is kept; and no such record may at any time be removed from such office, except when temporarily removed by the clerk having the record in custody to the courts of which he is clerk, and to courts held in the city or village where the office of such clerk is situated, unless by order of some court of record made in open court, and entered in the minutes thereof, which order must specify that the production of such record, instead of such transcript, is necessary. *Laws of 1838, chap. 129.* 1 R. S. 689, 4th ed.

To keep account of fees in a book.] The clerk must keep in his office a book, in which must be entered all fees charged or received by him for official services, the time of rendering the same, the person if known to him, for whom the same were rendered, and a brief statement of the nature of

the service: such books must be open for inspection at all times without fee or reward during business hours. *Laws of 1844, chap. 125. 1 R. S. 690, 4th ed.*

To send statement to secretary of state.] Between the first and tenth day of January, every year, the clerk must transmit, free of expense, to the secretary of state, a statement which must exhibit:

1. The amount of all fees charged or received by him for recording deeds, mortgages, and other papers, and for certificates of such recording.

2. The amount of all fees charged or received by him for searching the files and records of his office, and for certificates of such searches.

3. The amount of all sums charged or received by him for services rendered for the county.

4. The amount of all sums charged or received by him for all other official services.

5. The sums paid by him for assistance in the performance of his official duties, and the names of the persons to whom the same were paid, and also the sums paid for fuel, lights and stationery, and other expenses incidental to the office, with the particular items thereof.

Statement to be verified.] The clerk must annex or subjoin an affidavit to such statement that the facts set forth are true. *Laws of 1844, chap. 125. 1 R. S. 690, 4th ed.* The register of the city and county of New-York is required to perform a like duty. *Id.*

Not to charge for fuel or lights.] The clerk is not allowed to charge the county for fuel or lights for his office, nor for stationery, except record books and stationery furnished by him for courts held in

his county, nor is he allowed to charge for filing and docketing the transcript of a judgment entered in any other office. *Id.*

Seals.] The seal required to be procured by the clerk by the 72d section of the judiciary act, passed in 1847, is the seal of the county, and of such clerk, and will be used by him in all cases where he is required to use an official seal. *Laws of 1847, chap. 470, sec. 36.* Upon the seal, which the county clerk is required to procure and keep, must be engraved the name of the county of which he is clerk, and the word *seal*. A description of the seal must be deposited or recorded in the office of secretary of state there to remain of record. *2 R. S. 362, 4th ed.*

Transcripts.] Transcripts of judgments rendered in this state in any court of the United States, duly certified by the clerk of such court, may be filed and docketed by the clerk of any county. Judgments and decrees, and transcripts of judgments and decrees docketed in the office of any county clerk must all be docketed in the same docket. *Id.*

Erie county.] The office of county clerk in the county of Erie is a salaried office. *Laws of 1849, chap. 115.*

County clerk may be removed by the governor.] The clerk may be removed by the governor, but he is entitled to have a copy of the charges against him, and an opportunity of being heard in his defence before any such removal. *1 R. S. 333, 4th ed.*

Vacancies how supplied.] In case of vacancy, except when the vacancy arises from the death of the incumbent, the governor will appoint a clerk to exe-

cute the duties of the office until the vacancy can be supplied by an election. The person appointed will possess all the rights and powers, and be subject to all the duties and obligations of the person removed. 1 R. S. 334, 4th ed. Vacancies may be supplied at a special election in the cases pointed out in the Revised Statutes at page 338, 4th ed.

When to hold over.] The clerk having duly entered on the duties of his office will continue to discharge the same until his successor is duly qualified. 1 R. S. 328, 4th ed. 24 Wend. 215.

Census.] The duty of the clerk in regard to the enumeration of the inhabitants of the State is pointed out in the Revised Statutes at pages 292 and 300, 4th ed.

Oaths of officers.] The oaths of justices of the peace and commissioners of deeds must be taken before the county clerk of the county for which they may have been elected. The justice should sign the oath in the presence of the clerk, and should always thereafter make his official signature in the same manner and style. The oath is kept on file that future clerks may examine it and certify as to the justice's signature. 1 R. S. 330, 4th ed. The oaths of notaries public, superintendents of canal repairs, collectors of canal tolls, as well as the oaths of all judicial, executive and administrative officers appointed or elected for any county or city, and of all officers whose duties are local, or whose residence in any particular county is prescribed by law, must be filed in the office of the clerk of the county in which they reside. 1 R. S. 331, 4th ed.

To notify governor in certain cases and also supervisors.]

In case any officer whose duty it is to file his oath of office or his official bond with the clerk, neglects so to do, within the time required, the clerk must immediately give notice of such neglect to the governor; except in the case of a justice of the peace. When he neglects to file the certificate of his oath of office, the clerk must give notice of such neglect to the supervisor of the town from which the justice was elected. 1 R. S. 331, 4th ed.

Elections.] The duties of the clerk under the election law, are pointed out in Chapter XXII, on the duties of the Board of County Canvassers.

Collectors' Bonds.] The clerk must receive and enter the collectors' bonds in a book to be procured for that purpose, in the same manner in which judgments are entered of record, in order that such bond may be a lien on the real estate of the collector and his sureties. 1 R. S. 653, 4th ed. He must index such books in the same manner that he indexes his book of mortgages and deeds. 2 R. S. 473, 4th ed.

Duty respecting sheriff's bonds.] When receiving and filing the sheriff's bond, the clerk is required to administer an oath to each of the sureties named therein, that he is a freeholder within this State, and worth, if in the city and county of New-York, the sum of twenty thousand dollars, and if in any other county, such sum as will be proportionate to the number of sureties bound in such bond, and to the amount of the bond required in such county, (that is to say ten thousand dollars) over and above all debts whatsoever, owing by him, which oath must be endorsed on the bond and subscribed

by each of the sureties in the presence of the clerk, who will, notwithstanding, judge of and determine the competency of such sureties. 1 R. S. 696, 4th ed.

To pass on the sufficiency of surrogate's sureties.] The surrogate in each county, within twenty days after notice of his election, is required to execute his bond and present the same to the clerk for approval. In all the counties of the state except the county of New-York, his bond must be in the penal sum of five thousand dollars. The clerk is made the judge of the sufficiency of the sureties. If he is satisfied by the oath of the sureties, or from any other source, that they are good and sufficient, he will endorse on the bond a certificate of his approval and file such bond in his office, there to remain a matter of record. 1 R. S. 699, 4th ed.

Duty under school law.] Should the town superintendent neglect to discharge the duty required of him in respect to making his report to the county clerk, as pointed out at page 283, the clerk must immediately give notice of such neglect to the clerk of the town. 1 R. S. 887, 4th ed.

Clerks, to record conveyances.] Every conveyance of real estate must be recorded in the office of the clerk of the county where such real estate is situated. Such conveyance not recorded, is void as against any subsequent purchaser in good faith and for a valuable consideration, whose conveyance is first recorded. 1 R. S. 162, 4th ed.

To provide different sets of books.] The clerk must provide a set of books for recording deeds and all conveyances absolute in terms and not intended

as mortgages or securities. He must also provide a set of books in which mortgages and securities are to be recorded. *Id.*

Certain deeds to be deemed mortgages.] Deeds conveying real estate, which by any other instrument in writing appears to have been intended only as a security in the nature of a mortgage, though it be an absolute conveyance in terms, is considered as a mortgage, and the person for whose benefit such deed is made will not derive any benefit from the recording of the same, unless every writing, operating as a defeasance of the same, or explanatory of the design of such deed, be also recorded therewith and at the same time. *James v. Johnson and Morey*, 6 J. R. Chy. 417. 2 R. S. 162, 4th ed.; 1 R. S. 756, 1st ed.

Conveyances to be acknowledged before they can be recorded.] Before the clerk is permitted to record any conveyance, it must be duly acknowledged by the parties executing the same, or proved by a subscribing witness thereto, before one of the following officers :

1st. If acknowledged or proved within this State, before the justices of the supreme court, judges of county courts, mayors and recorders of cities, commissioners of deeds, justices of the peace in towns; but no county judge or commissioner of deeds can take any such proof or acknowledgment out of the city or county for which he was appointed.

2d. If the instrument is acknowledged or proved out of this State, and within the United States, before the chief justice, or any associate justice of

the supreme court of the United States, or district judge of the United States, or any judge or justice of the supreme, superior, or circuit court of any state or territory, within the United States, or the chief judge or any associate judge of the circuit court of the United States, in the district of Columbia; but no proof or acknowledgment taken by any such officer, will entitle a conveyance to be recorded, unless taken within some place or territory to which the jurisdiction of the court to which he belongs, shall extend.

3d. The mayor of any city of the United States, or any consul of the United States resident in any foreign port or country, and any judge of the highest court in Canada have the power to take the proof or acknowledgment to any conveyance to be recorded in this State, and when duly certified by either of them the same will be as valid and effectual as if taken before any of the justices of the supreme court of this State. *St. John v. Croel*, 5 *Hill*, 574. 1 *R. S.* 757, 1st ed; 2 *R. S.* 163, 4th ed.

For the rules required to be observed by persons taking acknowledgments or proof of written instruments to be recorded in this State, by persons residing in Europe or South America, the clerk is referred to 2 *R. S.* 162 to 166, 4th ed.

Requisites for acknowledgments.] The officer taking an acknowledgment must *know*, or have satisfactory *evidence* that the person making the same is the individual described in, and who executed such conveyance. 2 *R. S.* 166. 2 *Cow.* 522.

Married women.] A married woman in this State

must acknowledge in a private examination, separate and apart from her husband, that she executed the conveyance freely and without fear or compulsion of her husband, and no estate of any such woman will pass by any conveyance not so acknowledged. 2 R. S. 166, 4th ed. *Stevens v. Stevens*, 16 Johns. 116.

For the forms for acknowledgments, see Appendix, commencing at No. 93.

Certificates of certain judges.] When a conveyance is proved or acknowledged before any judge of the county courts, not of the degree of counsellor-at-law, in the supreme court, or before any commissioner of deeds appointed for any county or city, it is not entitled to be read in evidence or recorded in any other county than that in which such judge or commissioner resides, unless in addition to the preceding requisites there shall be subjoined to the certificate of proof or acknowledgment, signed by such judge or commissioner, a certificate under the hand and seal of the clerk of the county, in which such officer resides, specifying that such officer was, at the time of taking such proof or acknowledgment, duly authorised to take the same, and that the clerk is well acquainted with the handwriting of such officer, and verily believes that the signature to such certificate of proof or acknowledgment is genuine. 2 R. S. 168, 4th ed. *Wood v. Weiant*, 1 Cow. 77.

The same rule, as is above mentioned, applies to proofs or acknowledgments taken before justices of the peace.

To record affidavits of sale.] When mortgages are

foreclosed by advertisement, *see* 2 R. S. 779, 4th ed., the several affidavits required by the statute must be recorded at length by the clerk in the record of mortgages.

Indices to books.] The clerk must attach to every book kept in his office in which deeds or mortgages are recorded, or collectors' bonds entered, an index to the matters contained in such books, arranged in alphabetical order, under the names of the several parties to such matters, with references to the pages where the same may be found, which, together with such books, must at all proper times be open for the inspection of any person paying therefor the legal fees hereinafter mentioned. 2 R. S. 473, 4th ed.

Certificates of limited partnership.] The clerk must receive and file and record such certificates relating to limited partnerships as may be presented to him duly acknowledged or proved. 1 R. S. 765, 4th ed. 2 R. S. 174, 4th ed.

Office hours.] The clerk must keep his office open for the transaction of business every day in the year except Sundays and the Fourth of July, from 9 to 12 o'clock A. M. and from 2 to 5 o'clock P. M. 2 R. S. 285, 1st ed.; 472, 4th ed. This does not apply to the county of New-York nor the county of Kings.

Filing papers.] This is done by writing across the paper near the lower end, after being folded, the day and year when filed, and depositing it in its proper place.

List of convictions, when sent.] The clerk must send to the secretary of state within ten days after the

sitting of each court of oyer and terminer and sessions, a list of all criminal convictions at such courts, and of all certificates of convictions filed in his office since his last report.

To file reports of town superintendents.] He must receive and file the annual reports of town superintendents of common schools and examine the same, and if they appear defective, return them for correction. He must notify such town superintendents as neglect to file their reports before the first day of August. He must make an abstract of all such reports on or before the first day of October, (for which blanks are furnished) and forward the same to the superintendent of public instruction. One copy should be filed in the office of the clerk.

To distribute laws.] The clerk will receive from the secretary of state session laws, acts of congress, and other books, and also blanks for common schools, and distribute the same according to the instructions he may receive.

To copy names of jurors.] Upon receiving the new lists of petit jurors required to be furnished once in three years, the clerk on the first day of August thereafter, will write each person's name, and occupation, and residence, upon a separate slip of paper of similar size, and fold or roll each and deposit them in a *draft box*, which should be kept locked; having completed his new list, he will destroy the old list. 2 R. S. 412; p. 656, 4th ed.

Names of grand jurors.] The clerk will receive annually from the board of supervisors a list of grand jurors for the year, the names of which must be written upon separate slips of paper, the same as

petit jurors, and folded and kept in a box called the grand jury box. *R. S. 721, 1st ed.; p. 905, 4th ed.*

To publish notices of drawing jurors.] The clerk, at least six days before the drawing of any jury, must publish notices in a newspaper of the county, if there be any, and if not, he must affix such notice on the court house door, of the time and place (which should be at the clerk's office,) when such jury will be drawn. A copy of such notice must be served on the sheriff of the county and the county judge, at least three days before such drawing. *2 R. S. 414, 1st ed.; 661, 4th ed.*

When to draw jurors.] Fourteen days before holding any circuit court, court of oyer and terminer, county court, or mayor's court, the clerk of the county in which such court is to be held, must draw the names of thirty-six persons, to serve as jurors at such court, except in the county of New-York, he draws eighty-four, and in the county of Franklin twenty-four. The sheriff and county judge attend the drawing, and if from any cause they do not attend, the clerk must adjourn the drawing of the jury until the next day, and must by another notice require the delinquent county judge, or sheriff, or some other county judge or any two justices of the peace, to attend such drawing. If at the adjourned day the sheriff or under sheriff, and a county judge or justice of the peace appears, but not otherwise, the clerk will proceed in the presence of the officers so appearing to draw the jury.

Mode of drawing.] The clerk will conduct the drawing as follows: he will shake the box con-

taining the names of jurors returned to him, so as to mix the slips of paper on which such names were written as much as possible: he will then publicly draw out of the box, as many of the slips of paper containing the names, as there shall be jurors required by law, or specially ordered for such court. A minute of the drawing must be kept by one of the attending officers, in which must be entered the name contained on every slip of paper so drawn, before any other such slip is drawn. If, after drawing the whole number required, the name of any person appears to have been drawn who is dead, or become insane, or who has permanently removed from the county, to the knowledge of the clerk or any other attending officer, an entry of such fact must be made in the minutes of the drawing, and the slip of paper containing such name must be destroyed. Another name will then be drawn, in place of that contained on the slip of paper destroyed, which must be in like manner entered in the minutes of the drawing; the same proceedings will be had as often as may be necessary, until the whole number of jurors required shall have been drawn; the minutes of the drawing will then be signed by the clerk and the attending officers, and be filed in the clerk's office. A list of the names of the persons so drawn, with their additions and places of residence and specifying for what court they were drawn, must be made and certified by the clerk and the attending officers, and be delivered to the sheriff of the county. 2 R. S. 334, 2d ed.

Mode of drawing grand jurors.] The drawing of

grand jurors is conducted in all respects like the drawing of petit jurors, the clerk makes a like certificate in all respects and delivers the same to the sheriff of the county. 2 R. S. 906, 4th ed.

When to issue subpœnas.] The clerk of any county in which an indictment may be found or any proceedings before the sessions may be instituted, upon the application of the defendant, without requiring any fees, must issue subpœnas as well during the setting of a court as in vacation, for such witnesses as such defendant may require. 2 R. S. 912, 4th ed. Form of the subpœna, see the same page of the statute last above cited.

May take affidavits.] In all cases where oaths or affidavits are required to be taken by law, except in those cases where special provision is made requiring oaths of office to be taken before particular officers, the clerk may administer such oaths and take and certify such affidavits. 2 R. S. 284, 1st ed. 2 R. S. 471, 4th ed.

Duty of the clerk respecting courts.] The county clerk officiates as clerk of the supreme court at all the general and special terms thereof held in his county. Const. art. 6, sec. 19. 1 R. S. 60, 4th ed. He is clerk of all the circuit courts, courts of oyer and terminer, sessions, and county courts held in his county. 2 R. S. 380, 4th ed. Having filed such pleadings and papers as are furnished him by the attorneys, and having made out and delivered to the sheriff the list of jurors drawn to attend court as has been directed, the next step in preparing for court is to make up the calendars. He will be furnished by the attorneys, at least four days be-

fore any term of court, at which cases are to be heard or tried, with notes of issue, which consist of the title of the action, the names of the attorneys, and the date when the last pleading was served. *Code of Procedure, sec. 256.* The calendar consists of such notes of issue arranged as follows: The clerk rules the pages of a blank book or several sheets of paper from top to bottom into three spaces, in the first space he enters the title of the cause, in the second the date of the issue, and in the third the names of the attorneys, taking care in arranging the dates to insert the senior before the junior. In counties where the calendar is large, it is the practice to print the circuit calendar. The calendar for the general terms of the supreme court must in *all cases* be printed. *Rule 34 of Sup. Court.* Appeals on such calendar must be entered according to the date of the service of the notice of appeal, and other cases as of the time when the question to be removed arose. 4 *How. Pr.* 26. The clerk is not required to enter any cause on the calendar unless the note of issue is received at least four days before the term of court.

His duty at a court at which issues of fact as well as indictments are tried.] The clerk having prepared his calendar, next provides himself with a quantity of paper upon which to keep the minutes of the proceedings of the court, *temporarily*, until the same can be transcribed into the book of minutes to be kept as a permanent record.

Opening the court at a circuit and oyer and terminer.] The judges having appeared in the court room, and the sheriffs, constables and jurors being con-

vened, and the clerk being requested by the circuit judge to open the court, either proclaims or directs the person *acting* as crier, (the office of crier being abolished, Laws of 1847, chap. 470,) to proclaim as follows:

“Hear ye, hear ye, hear ye. All manner of persons having business to do at this circuit court and court of oyer and terminer, held in and for the county of _____, let them draw near and give their attendance, and they shall be heard.”

Proclamation to sheriff.] He then says: “Sheriff of the county of _____, return the several writs and precepts to you directed and delivered, and returnable here this day, that the court may proceed thereon.”

The clerk then calls the names of such constables as have been designated to attend the term of the court, as follows: “Constables of the county of _____, answer to your names as you are called and save your fines.” He notes the names of the absentees, if any.

Proclamation before calling grand jury.] The clerk next says: “Hear ye, hear ye, hear ye. You good men who are here returned to inquire for the people of the State, of New-York, for the body of the county of _____, answer to your names every one, at the first call, and save your fines.” He then calls the names of the grand jurors, individually, and if sixteen or more appear, the court will designate some one of the number as foreman, and direct the clerk to swear him as such.

Oath to foreman of grand jury.] The clerk next proceeds to administer to the foreman the follow-

ing oath : “ You, as foreman of this grand inquest, shall diligently inquire, and true presentment make, of all such matters and things as shall be given you in charge ; the counsel of the people, your fellows, and your own, you shall keep secret ; you shall present no man for envy, hatred, or malice ; neither shall you leave any man unrepresented for fear, favor, or affection, or reward ; but you shall present all things truly as they come to your knowledge, according to the best of your understanding. So help you God.”

The remaining grand jurors are then sworn, usually four at a time.

Oath to grand jurors.] The clerk says : “ The same oath which your foreman hath taken on his part, you and each of you shall well and truly observe and keep on your parts. So help you God.”

Proclamation for silence while court is charging grand jury.] The grand jurors being all sworn the clerk proclaims as follows : “ The justices of the people do strictly command all manner of persons to keep silence while the charge is being given to the grand jury, on pain of imprisonment.” The grand jury having received their charge, the next step usually is to call the petit jurors, although this matter, as to which jury shall be called first, will be regulated by the court as convenience may require.

Proclamation on calling petit jurors.] The clerk having received the lists for the petit jurors from the sheriff, when directed by the court to call the jury, says as follows :

“ Hear ye, hear ye, hear ye : You good men who

are here returned this day to try the several issues joined at this circuit court, and court of oyer and terminer, held in and for the county of _____, answer to your names as you are called, and save your fines." The clerk then calls the names as they appear on the sheriff's panel, noticing the names of the absentees. He then enumerates to the court the names of the defaulters, and if the court imposes a fine, another proclamation is made. At this time, also, defaulting constables are usually fined.

Proclamation before imposing fines.] The clerk then says, "Hear ye, hear ye, hear ye: The court have imposed a fine of _____ dollars upon each of the following persons for their non-attendance at this court, as follows: A. B., _____ dollars." He makes a similar proclamation in regard to defaulting constables. He next swears the attending petit jurors, usually four at a time.

Oath to petit jurors.] The sheriff holding the Gospels, the jurors, as they are called, appear usually four at a time, and place their right hand upon the book, the clerk says, "You and each of you shall well and truly try the several issues which you shall have in charge at this circuit court, and true verdicts give therein respectively, according to evidence. So help you God." Should any of the jurors affirm, the commencement of the affirmation would be, "You do solemnly, sincerely and truly declare and affirm, that," &c., and the conclusion would be, "thus you affirm." Should any jurors desire to swear by the uplifted hand, the commencement of the oath would be, "You do swear

in the presence of the ever living God, that," &c., and the conclusion would be, "thus you swear." The same rule applies when witnesses or others affirm, as to the commencement and conclusion of the affirmation.

The court being duly organized, the business on the calendar is usually taken up first, although criminal business takes precedence if the district attorney is ready to move the trial of any indictment. The circuit court and court of oyer and terminer, although they convene at the same hour, and for convenience are opened at one and the same time, yet they are distinct courts, and the clerk must keep the minutes of their proceedings separate and distinct from each other. A justice of the supreme court alone, commonly called a circuit judge, holds the circuit, the ordinary business of which is to try issues of fact in civil cases. No business can be transacted in the oyer and terminer, nor can the court be organized, unless there is upon the bench a justice of the supreme court, who presides, and either a county judge and one justice of the sessions, or such presiding justice and two justices of the sessions (justices of the peace.) 2 R. S. 377, 4th ed. The ordinary business of the oyer and terminer is to try indictments for the higher grade of crimes. The calendar being taken up, the judge commences calling the title of the causes as they appear in their order; upon a cause being moved, he directs the clerk to impanel a jury.

Proclamation for jury in a civil cause.] The clerk will then say, "You good men who are here im-

pannelled and returned to try this issue joined between I. D., plaintiff, and R. R., defendant, answer to your names as you are called and save your fines." Upon twelve answering and taking their seats, if there are no objections, the trial will proceed. If a juror is challenged, and the court should appoint triers, the clerk will swear them.

Oath to triers.] "You shall well and truly try, and truly find whether A. B., the juror challenged, stands indifferent between I. D., plaintiff, and R. R., defendant, in the issue about to be tried. So help you God."

Oath to witness in a civil cause.] When the cause is ready to proceed and a witness is called to the stand to give evidence, the clerk swears him as follows: "The evidence you shall give in this issue joined, between I. D., plaintiff, and R. R., defendant, shall be the truth, the whole truth, and nothing but the truth. So help you God."

Oath to interpreter.] When it becomes necessary to swear an interpreter, the clerk says, "You shall well and truly interpret between the court, the jury, the counsel and the witness in this issue joined, between I. D., plaintiff, and R. R., defendant. So help you God."

Voire dire.] Should either party desire a witness to be sworn respecting his interest, the form would be, "You shall true answers make to such questions as shall be put to you touching your interest in the event of this action. So help you God."

Oath to a constable on retiring with a juror.] Should a juror or jurors desire to be absent before the close of the trial, and the parties do not consent to his

retiring alone, the clerk swears a constable as follows: "You shall retire with such jurors as have leave of absence from this court; you shall not speak to them yourself in relation to this trial, nor suffer any person to speak to them; and you shall return with them without delay. So help you God."

Oath to constable to keep jury during recess.] "You shall retire with the jury to some convenient room, to be furnished by the sheriff; you shall not suffer any person to speak to them, nor speak to them yourself in relation to this trial, and return with them at the order of the court. So help you God."

Oath to constable attending jury when they retire to make up their verdict in civil or criminal cases.] The trial of a cause or an indictment being completed and finally submitted, the clerk administers to the constable who retires with the jury, the following oath: "You shall well and truly keep every person sworn on this jury in a private and convenient place, without meat or drink, water excepted; you shall not suffer any person to speak to them, nor speak to them yourself, without leave of the court, except it be to ask them whether they have agreed on their verdict, until they shall have agreed on their verdict. So help you God."

Oath to juror or constable asking to be excused or discharged.] "You shall true answers make to such questions as shall be put to you, touching your application (or the application for and in behalf of A. B.) to be discharged (or excused) from attendance as a at this court. So help you God."

Oath to poor witness on application for expenses.] Should a poor witness apply for the payment of his expenses while attending court, the clerk will swear him as follows: "You shall true answers make to such questions as shall be put to you touching your application for the expenses of your attendance at this court, as a witness in behalf of the people of this State. So help you God."

Arraignment for felony.] The court of oyer and terminer being in session, should the district attorney desire to arraign a person indicted for a felony, the clerk makes the following proclamation: "All persons are strictly charged to keep silence while the court proceeds to arraign the prisoners on indictments for felonies."

Proclamation for petit jury in case of felony.] The trial of an indictment being moved, the clerk will say: "You good men who are here returned to inquire between the people of the State of New-York and R. R., the prisoner at the bar, answer to your names as you are called, and save your fines."

The clerk's address to the prisoner before he begins to call the jury.] In cases where the accused is indicted for a crime punishable with death, or imprisonment in state prison for ten years or more, in which case he is entitled to challenge twenty of the persons drawn as jurors, and no more, the clerk makes the following address to the accused:

"A. B., these good men that you shall now hear called, are the jurors who are to pass between the people of the State of New-York and you; (*or if in a capital case, upon your life and death;*) if therefore you will challenge them, or any of them, you must

challenge them as they come to the book to be sworn, before they are sworn, and you shall be heard."

The crier then calls the jurors one at a time as they are drawn by the clerk; and when the juror comes to the stand and is ready to be sworn, the clerk says to him:

"Juror, look upon the prisoner; prisoner, look upon the juror."

The clerk then administers the juror's oath.

The juror's oath.] "You shall well and truly try, and true deliverance make, between the people of the State of New-York and A. B., the prisoner at the bar, whom you shall have in charge, and a true verdict give according to the evidence. So help you God."

This is the proper form of the juror's oath in all cases of felony, whether the prisoner be entitled to his peremptory challenges or not.

Oath of a witness on a trial for a felony.] "The evidence you shall give between the people of the State of New-York and A. B., the prisoner at the bar shall be the truth, the whole truth, and nothing but the truth. So help you God."

There are a variety of other proclamations to be made during the progress of the court, which are as follows:

Proclamation for persons bound to answer.] "Hear ye, hear ye, hear ye: A. B., come forth and answer to your name, and save yourself and your bail, or you will forfeit your recognizance."

Proclamation for bail to produce principal.] "Hear ye, hear ye, hear ye: C. D. and E. F., bring forth A.

B., your principal, whom you have undertaken to have here this day, or you will forfeit your recognizance.”

Proclamation for discharge of person against whom no bills are found.] “Hear ye, hear ye, hear ye: If any man can show lawful cause why A. B. should stand longer bound, (or imprisoned,) let him come forth and he shall be heard; otherwise the said A. B. will be discharged.”

If no objections be made, the clerk will say: “No cause being shown, he is discharged.”

Proclamation for defendant on an inquest.] “A. B., come forth and make your challenges, or you will lose your challenges, and an inquest will be taken against you by default.”

Proclamation for plaintiff to appear and prosecute.] “A. B., appear and prosecute your action, or your default will be entered.”

Proclamation for adjournment.] “Hear ye, hear ye, hear ye: All manner of persons who have any further business to do at this circuit court and court of oyer and terminer, (or court of common pleas and general sessions of the peace,) may depart hence, and appear here again to-morrow morning at o’clock, to which time these courts are adjourned.”

Proclamation for opening court after adjournment.] “Hear ye, hear ye, hear ye: all manner of persons who have been adjourned over to this hour, and have any further business to do at this (*state the name of the court,*) let them draw near and give their attendance and they shall be heard.”

Proclamation before sentence.] After a defendant has been convicted and when brought into court for

sentence, the clerk will make proclamation as follows: "Hear ye, hear ye, hear ye: All manner of persons are commanded to keep silence while judgment is given against the prisoner at the bar, upon pain of imprisonment."

Proclamation calling jury in case of misdemeanor.] When an indictment for a misdemeanor is brought on to be tried, the clerk proclaims as follows: "You good men, who are here returned to try this issue of traverse between the people of the State of New-York and R. R., the defendant, answer to your names and save your fines."

The clerk usually calls four jurors to the book and administers the following oath: "You shall well and truly try this issue of traverse between the people of the State of New York, and R. R., the defendant, and a true verdict give therein according to evidence. So help you God."

Oath to witness in case of misdemeanor.] "The evidence you shall give in this issue of traverse between the people of the State of New York, and R. R., defendant, shall be the truth, the whole truth, and nothing but the truth. So help you God."

Receiving verdict in case of felony.] The jury before whom an indictment for the higher grade of felony has been tried, having returned into court, the clerk says: "Gentlemen of the jury, please answer to your names." Having called all the names he asks: "Have you agreed on your verdict?" If the foreman responds in the affirmative, he says: "Jurors look upon the prisoner." The foreman then rises, and the clerk continues: "How say you, do you find the prisoner guilty of the

felony whereof he stands indicted, or not guilty?" The foreman answers as the case may be, and the clerk then says: "Hearken to your verdict, gentlemen of the jury, as the court has recorded it: you say you find the prisoner at the bar guilty (or not guilty, *if that be the case,*) of the felony (or murder) whereof he stands indicted, and so say you all."

Polling the jury.] Polling the jury is simply inquiring of each juror individually whether the verdict rendered by the foreman is the verdict of *each* juror. It is usually done as follows: The clerk calls the foreman by name and says: "A. B., how do you find? Do you find the prisoner at the bar guilty or not guilty?" The foreman responds. The clerk then says to the next juror on the list, calling him by name, "Is this your verdict?" He proceeds in the same way until all are called and then says: "Hearken to your verdict, gentlemen, as the court has recorded it, you say you find the prisoner at the bar guilty of the felony whereof he stands indicted, so you all say." This form may be readily adapted to cases of misdemeanors by substituting the word defendant for the word prisoner, and the word misdemeanor for the word felony. The above directions it is believed will be sufficient to indicate the duty of the clerk in polling a jury in a *civil* case.

Receiving verdict in civil action.] The jury having returned into court, the clerk addresses them as follows: "Gentlemen of the jury, please answer to your names." Having called the names of each, he says: "Gentlemen, have you agreed on your verdict?" The foreman rising, the clerk con-

tinues: "How do you find?" The foreman then states the verdict, the clerk making a note of it in his minutes. The clerk then says: "Gentlemen, please listen to your verdict as the court has recorded it. You say you find (*the clerk will report the finding, as given by the foreman*) and so you all say."

Form of keeping minutes of verdict.]

SUPREME COURT.—County of

J. D. } At a circuit court held at the court
against } room, in and for said county, on the
R. R. } day of 18 .

Present, Hon. W. F. ALLEN,

Justice of Supreme Court.

(Jurors' names.)

(Witnesses' names.)

Verdict for the plaintiff for damages, \$.

Taking the verdict in other cases.] The mode of rendering and entering the verdict when the delivering of personal property or the recovering of real property is desired, is pointed out in section 261, Code of Procedure. Where the court directs a special verdict, it is the business of the attorneys to prepare the same under the direction of the court, for the clerk to enter:

Orders.] The order for judgment, and some of that class of orders ordinarily drawn by the court, are given in the Appendix. Such orders as the court directs to be entered, are usually drawn by the attorneys and handed to the clerk to be entered. This is the most correct practice, because questions of costs and special clauses which the court may authorise to be inserted in the orders to

be entered, are matters affecting the attorneys and the parties, the regulation and supervision of which should not be required of the clerk. He should not be required to perform the duty of an *attorney* in that respect.

Several forms for the use of the clerk are given in the Appendix, commencing at No. 221.

Mode of keeping records.] As has been seen, the clerk is the recorder and keeper of all the conveyances of real estate in his county. This part of his duty, though comparatively easy, is very important; much good will result to those who succeed him and to the public in future times if the records are kept in a legible, correct, and proper manner. I shall therefore be somewhat minute in relation to this part of a clerk's duty. He is authorized to procure at the expense of the county all necessary books for records; these should be of good paper and neither so small as to make a change of books in examining the records unnecessarily frequent, or so large and ponderous as to make it wearisome in taking down and replacing them upon shelves prepared for them. A book of 500 pages of thick good paper will be found a very convenient size. The books should be firmly bound in thick heavy covers with spring backs. Each cover should have upon the outside at least six brass knobs or protectors with a flat surface; if but four the book will become curved when lying upon the side.

Two sets of books, and what to contain.] For recording conveyances of real estate two sets of books are required, one lettered "*Deeds*," and the other "*Mortgages*," each of which should be numbered.

All conveyances in fee simple or reversionary, and leases for life or for a term of years, not less than three, should be recorded in the deed book; and all mortgages and all conveyances, absolute in their terms but intended as securities in the nature of mortgages, should be recorded in the book of mortgages. Also every assignment of a mortgage or release of a part of mortgaged premises, and all affidavits of the foreclosure of a mortgage must be recorded in the mortgage book, and also all certificates of satisfaction of a mortgage. Upon recording a certificate of the satisfaction of a mortgage with the certificate of proof or acknowledgment, it is the duty of the clerk to turn to the original record of the mortgage, and in the blank space which should be left immediately following each record, make an entry, certifying that by virtue of a certificate of satisfaction recorded this day of , 18 , in book of mortgages, page the last preceding mortgage is cancelled and discharged of record. Upon recording an assignment, release of mortgaged premises, or affidavits of foreclosure and sale, a note of the same should be entered under the record of the mortgage, referring to the book and page where such assignment or other writing affecting such mortgage is recorded. It is quite common for a *mortgagee* after receiving payment of his mortgage, to endorse upon the back in substance that the *within mortgage* is paid, and sign his name to it. In such a case the officer taking the acknowledgment should certify "known to me to be the *mortgagee within named*," as well as who executed, etc. As the clerk in such cases records

nothing but these two brief certificates, the mortgagee in his certificate of satisfaction should briefly describe the mortgage by names, and the parties, and the book and page where recorded, so that when copied separately it would apply to the right mortgage and to no other. Without such description, a clerk would be justified in refusing to cancel the record of a mortgage, and in some counties they do so refuse.

To keep a register.] Every clerk should keep a register (sometimes called roster) for entering conveyances when received for record. The law does not require this, yet experience has shown that it is almost indispensable. It should be a bound volume of several hundred pages, sufficient to answer for one term of three years. Each page should be ruled lengthwise, dividing it into six parts of different widths, as needed, with printed headings, as follows :

Day received.	Hour.	Name of instrument.	Grantor or mortgagor.	Grantee or mortgagee.	Time delivered and to whom.
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How to proceed on receiving a conveyance.] Upon receiving a deed or other instrument in writing for record, the first object should be to see that it has been properly acknowledged or proved. The different forms of acknowledgment are given in the Appendix, commencing at No. 93. The statute requirements have been hereinbefore pointed out. The law requires that the certificates of justices of the peace and commissioners of deeds of cities, living out of the county where the conveyance is to be recorded, should be accompanied by a certi-

cate of the clerk of the county where they reside, attached thereto, showing the official character of such officer, and that he is acquainted with his handwriting, and believes the signature to his certificate of acknowledgment is genuine, before the deed or other written instrument can be recorded in any other county,

The governor of this State is authorized to appoint commissioners residing in other States, to take acknowledgments of papers to be recorded in this State, when properly certified under their hand and official seal, to which must be attached a certificate from the secretary of state of this State, as to their official seal and official character. *See laws of 1850, page 583.* The laws of 1848, chap. 195, provide that acknowledgments may be taken in another State by any person authorized by the law of such State or territory to take such acknowledgments, provided they have attached thereto a certificate of the clerk of the county, that the person taking such proof or acknowledgment was at the date thereof an officer duly authorized by law to take the same, and that he *is acquainted* with his handwriting and believes his signature is genuine. 2 R. S. 163, 4th ed.

Patents for lands, signed by the governor and secretary of state, with the secretary's seal, and also deeds for lands sold for taxes, made by the comptroller, with his official seal, may be recorded without proof or acknowledgment. 2 R. S. 169, 4th ed.

Deeds executed by sheriffs or other officers, authorized to give deeds, must be acknowledged or

proved the same as other deeds. The law requires that affidavits of foreclosure shall be recorded in the book of mortgages, consequently nothing appears in the book of deeds showing title in the purchaser of the mortgaged premises; it therefore frequently becomes necessary in searching for title, to look for a mortgage from a previous owner, and see if it has not been foreclosed by advertisement and sale, thus sliding the title into the hands of another. Every conveyance is in law considered recorded from the hour it is left at the office for that purpose. If upon examination it is found to be properly acknowledged, it should be entered in the register, and a note of the day and hour when recorded made upon the back of the instrument, that the recording clerk can write his certificate of the "book and page, *day and hour*," where and when recorded, upon such instrument, which certificate the clerk or his deputy should sign, as the law makes it *prima facie* evidence of such recording.

Scribes.] As clerks generally employ scribes to do their recording, it often happens that personal or political friendship has more influence in their selection than merit and ability. Such persons should not only be ready writers, but be both able and willing to write a plain legible hand, so that it can be easily read without first studying each one's peculiar autograph. Each scribe should also be able to spell correctly.

Every conveyance should be copied entire in the book of records; words, abbreviations, characters and figures as they are in the original, with-

out, however, regarding *capital letters* where they do or do not appear. Capitals should be made in all places proper for them and in no other, without reference to the original, and *periods* inserted in every place where the sense requires it; attention to this makes the record appear much better and assists materially in *searching out titles*, which is a large business in the office. The scribe or recorder should for the same reason give his attention to several other apparently small matters, for instance: grantors and grantees, these should be written in a plain and unmistakeable manner; many names when hastily written are very similar in appearance, as Henry and Harvey and Harry, and Tyler, Fyler, &c.; also care should be taken in writing the words "twenty" and "seventy," so that one may not be mistaken for the other when commenced with a capital letter.

Secondly: The land conveyed; as a description of this sometimes commences at the fourth or fifth and occasionally at the twentieth, thirtieth, or even fortieth line, the first word of such description which is generally *all*, should be written in a large or prominent manner that it may readily be distinguished. Where two or three pieces are conveyed, the word *also*, should be written in the same style, and when the words *excepting* and *reserving* occur, the same rule should be observed. The same remark will apply also to the word following the final description, which is usually in a deed, *Together with, &c.*, and in a mortgage "*This grant is intended, &c.*"

Omissions.] Whenever an omission or repetition of a word occurs in an article for record, it should

be copied as it is, but it should be noted by underscoring, so that it may appear that the error was not from the carelessness of the recorder. The same remark will apply to all gross errors of language or of spelling, so that words of this kind occurring, should be underscored thus, "*fourty ate*" dollars and "*intrust.*" Whenever the letters intended by the writer to form a word or name cannot be ascertained, as is not unfrequently the case, a *fac simile* of such characters should be made in the record and underscored. But in all cases where the intention of the writer can be ascertained, his words and letters should be copied in a plain legible hand, without reference to the scribbling or uncouth form in which he may have penned them. The clerk is required to make an entry in the record immediately after the copy of every conveyance recorded, specifying the time of the day, month and year when such conveyance was recorded. 2 R. S. 168, 4th ed. He must also make a certificate upon every conveyance so recorded, of the time, book, page, and when and where recorded, and record the same in the order and as of the time when received for record.

The term "conveyance" embraces every instrument in writing by which any estate or interest in real estate is created, aliened, mortgaged or assigned, except wills, and leases for a term *not exceeding three years*. 2 R. S. 171, 4th ed. Leases for life or for a term of time exceeding three years should be recorded in the deed book. The term *conveyance* does not embrace a letter of attorney containing a power to convey real estate, but such letter or pow-

er of attorney when acknowledged or proved, may be recorded in the book of miscellaneous records.

Miscellaneous records.] Certificates of the organization of religious societies, and other instruments in writing, not in themselves a *conveyance* of real estate, should be recorded in the book of miscellaneous records.

Homestead exemption.] The act of April 10th, 1850, provides that every householder having a family, may avail himself of its provisions by making a written notice of his intention, and describing the homestead to be exempt from execution, and signing and acknowledging the same and having it recorded. Clerks are to provide separate books for recording such notices and keep an index to the same.

Record as to wife.] It often happens that a wife who joins with her husband in a conveyance, does not acknowledge such execution before it is left for record, and the same sometimes occurs in other cases where there are several grantors; in such cases the entry made at the bottom of the record of such conveyance should state that it is no record as to A. or B., who has not acknowledged. This seems necessary as the statute makes it a misdemeanor for a clerk to record any conveyance not duly acknowledged. 1 R. S. 762, 1st ed. 2 R. S. 171, 4th ed.

Alphabetical indices.] The act of 1843 makes it the duty of all clerks in counties where they had not previously kept general numerical indices to the books of record, to keep general alphabetical indices. He is to provide two sets of books which

should be about the size of the books of record, ruled lengthwise. One should be lettered on the back "*Grantors to Grantees*;" the other "*Grantees from Grantors*." The books should be so divided as to admit the entire alphabet, allowing to each letter as much space as experiences teaches it would need in proportion to the others. In the first named book enter all grantors alphabetically, allowing the first space for the number of the deed book; in the second enter the grantor, and in the third the grantee; and if the lot conveyed or at least the town where it is situated is entered in the remaining space it will often be beneficial. In the other book the grantees are entered alphabetically, and grantors in the next space. Indices to the book of mortgages should be kept in the same way, and add the word *assignment*, *satisfaction*, or *affidavit* after the names to such instruments. The alphabetical index has advantages over the numerical index in making searches. In those counties where none but numerical indices are used, it seems to be indispensable that every conveyance of land should name the number of the lot conveyed. Many clerks keep both indices; this very much facilitates the clerk's duty in searching.

Searches.] A very difficult as well as an important part of a clerk's duty is *searching the records*, and tracing out the title to real estate and making abstracts thereof. These are wanted by purchasers, or by persons wishing to sell or mortgage land. In most cases an examination for ten or fifteen years is satisfactory; but where banks, insurance

companies and others wish to loan money upon real estate security, the officers acting for such companies under general instructions, require an abstract extending back to an original conveyance from the State, or from some known patentee whose title is acknowledged good and indisputable. The first thing necessary to ascertain is a chain of title. In counties where none but numerical or lot indices have been kept, it is frequently the case in the vicinity of small villages and central parts of country towns, that the large lots of the original survey have been so divided and subdivided that such indices form a very imperfect guide, as well as very tedious to examine; it then becomes necessary to examine the alphabetical list of grantees to find who conveyed to the present owner. This being found, enter in a brief manner upon a sheet of paper, A. B. to C. D., entering their names, always adding "and wife" if she is a party, *warranty deed*, *quit claim* or other, as the case may be, and the date and consideration, and a brief mention of the premises conveyed with the quantity of land; always taking care to see that it includes all embraced in the present owner's claims, then add the time recorded, book and page. Proceed in the same manner from grantee to grantor, keeping like minutes of each deed until you find the first conveyance from the State, or patentee, or the first on record in the office, or extending back the term of years you may be required to examine. If a chain of title is thus found, it is then necessary to examine for conveyances by deed and mortgage, (by careful examination of the books of in-

dices) commencing one day previous to the date of the oldest patent or deed you have minuted, and ascertain whether there is any other conveyance from the grantee except the one you have minuted, recorded previous to the day after that was recorded, as the first on record takes precedence. If none is found take the name of the next grantee, or if there are several, examine the indices as to each from the day previous to the date, to the day after the deed from him or them was recorded; continue in the same manner to the date of your certificate or to the time required.

It often happens that mortgages given many years since, and paid, remain undischarged upon record, such must be added to your minutes; also if any releases or quit claim deeds are found from persons having some interest in the premises, such conveyances must be added to your memorandum. Then number the conveyances you have found, commencing with the earliest down to the last, without regard to the time recorded, that the chain of title may the more readily appear. It frequently happens that in tracing a title back, the land is found conveyed by a master in chancery. The "notice of lis pendens" should then be found, and if the suit was commenced to foreclose a mortgage it will refer to the book and page. The mortgage should then be entered upon your memorandum of conveyances, and the title of the cause in chancery with date of the notice to foreclose said mortgage and time of filing. The deed from the master will be numbered after the lis pendens. Having found the mortgagor, title must

then be found in him. Title is also frequently derived from a sheriff's deed, in which case the filing of his certificate of sale should be entered previous to stating his deed; and upon examining his deed it will frequently be found that the title of several defendants was sold when *one* was the sole owner.

Examination must be made until the title is found in one or more of them. In *each case* it is necessary to ascertain whether there is more than one grantee—whether the whole or only an undivided part of the premises described is conveyed, and whether there are any exceptions or conditions not usual in deeds, and generally to see that it is acknowledged by all the parties.

Where a conveyance is executed by an attorney for the grantor, his power of attorney should be named, which should be found in the book of miscellaneous records.

Wills conveying or bequeathing real estate may be recorded (with the surrogate's certificate and seal.) They should be recorded in the book of deeds. When found, a minute of the will should be entered in the certificate of search, before entering a deed from the legatee. Heirs deriving title from persons dying intestate, frequently convey such estate without naming from whom they inherit or how they obtained title, consequently the indices of grantees will show no title in them. If by means of the lot, indices, or otherwise, title can be found in the deceased person, those wishing to show a perfect and valid chain of title must supply the deficiency by satisfactory affidavits. The alphabetical indices of grantors should show the

name of every person whose real estate has been conveyed, whether by himself personally, or by sheriff or other officer, or executors or administrators, or by heirs; then if all the conveyances are upon record the entire chain of title can be ascertained.

This done you are prepared to copy it—certify that upon an examination of the records of conveyances by deed and mortgages in this office (by means of the general indices to such records) I find the following to wit:

“John Doe and wife Warrantee deed, dated as
 to { as in your memorandum and
 Richard Roe. { continued down as the con-
 veyances have been found to the present owner.”
Then add a certificate as follows:

“I further certify, that upon examination as aforesaid, I find no conveyance by deed, lease or mortgage (including mortgages to commissioners of loans—in this case the alphabetical list of mortgages to commissioners should be examined) executed by either of the above named grantors or grantees recorded, (since any given day or prior thereto—or in this office) affecting the premises conveyed in No. above, except the several conveyances hereinbefore named.”

Also certify that there are no collectors' bonds operating as a lien upon the premises, and no mechanics' liens upon it (by virtue of certificates filed etc. for that purpose.)

Collectors' bonds create a lien for three years upon real estate of the principal and surety, unless sooner cancelled. Also certify that upon exami-

nation you find no notice of *lis pendens* or sheriff's certificate filed in the office, (except No. , above) effecting the premises. The docket of judgments must then be examined for ten years last past, and the certificate should show that there is no judgment or decree against the present owner of the land, or against either who has owned it prior to the day after his conveyance was dated, or for greater safety, after it was acknowledged or proved. Judgments cease to be a lien on real estate after they have been docketed ten years.

Searches needed upon the foreclosure of a mortgage, only require an examination for incumbrances *since the date of the mortgage*.

Examination should be made for all conveyances executed by the mortgagor of the mortgaged premises, recorded after the recording of the mortgage; also, if executed by any subsequent *grantee* of the mortgaged premises; also for judgments against the mortgagor or his subsequent grantee docketed subsequent to the time of the recording of the mortgage.

Costs how to be inserted in judgment.] The clerk will insert in the entry of judgment, on the application of the prevailing party, upon two days' notice to the other, the sum of the charges for costs, and the necessary disbursements and fees of officers allowed by law, including the compensation of referees, and the expense of printing the papers upon any appeal. The disbursements must be stated in detail and verified by affidavit, which must be filed. *Code, sec. 311.*

Duty of the clerk as to taxing costs.] No authority

is conferred on the clerk to adjust costs, except in cases of final judgment, but the court may confer such authority by a special reference to him. *Mitchell v. Westervelt*, 6 *How. Pr. R.* 268. *Nellis v. De Forrest*, *id.* 413. The clerk should examine the charges whether they be opposed or not, and should strike out all disbursements and charges which, in his judgment, have been unnecessarily incurred. 19 *Wend.* 113. *Voorhees' Code*, 2d ed. 351.

Disbursements, how stated and verified.] Where there are charges in the bill for the attendance of witnesses, the affidavits should state the respective names and places of abode and occupation of the witnesses, the distance they respectively travelled, the days they respectively actually attended, and that each of them was, or was believed to be, a material and necessary witness for the party on whose behalf he was subpoenaed. 5 *Hill*, 595; 3 *id.* 457; 6 *id.* 376. 19 *Wend.* 82. 1 *Code Rep. N. S.* 400. 5 *Pr. R.* 458.

If the adverse party show that a number of the witnesses were not called at the trial, the party asking for the expenses of their attendance must explain why they were not called, or the expenses of their attendance should be disallowed. 6 *Hill*, 376. The clerk is not then at liberty longer to follow the ordinary affidavit. *Dowling v. Bush*, 6 *Pr. R.* 410.

Charges for copies of papers cannot be taxed, unless it be stated in the affidavit that such copies were actually and necessarily made for use, or used, and it must appear that the disbursements were necessary, and reasonable in amount. 2 *R. S.* 544.

Where postage or other disbursements are charged in a bill of costs, each item of such disbursements, and the occasion or circumstances of the expenditure, should be particularly specified. 2 *Paige*, 459. And where papers are sent by express, instead of by mail, the amount of carriage paid, not exceeding what would have been the amount of postage, may be allowed. Expenses of serving subpoenas cannot be charged as a disbursement. 10 *Paige*, 507. As to serving complaint, 4 *Pr. R.* 28. 2 *Sand. S. C. R.* 742. *Voorhees' Code*, 351, 2d ed.

For the costs and disbursements allowed by law, the clerk is referred to the Code of Procedure, secs. 303 to 322, and also *Voorhees'* valuable edition of the Code, 337 to 360, 2d ed.

Fees.] The clerk is entitled to receive:

For recording conveyances of real estate and all other instruments proper to be recorded, for each folio,\$0 10

(The term folio means one hundred words counting each figure a word.) 2 *R. S.*, 650, 1st ed.

For recording the certificate and the acknowledgment of the satisfaction of a mortgage, for each folio,	10
For discharging a mortgage of record,	25
For making every official certificate, without seal,	12½
For receiving and filing every paper deposited with him,	03
For searching for such paper on request, for each paper examined,	03

For entering a minute of an assignment or foreclosure of a mortgage under the record of such mortgage,	\$0 10
For searching the records in his office or the records of mortgages deposited with him by the commissioner of loans, or the dockets of judgments for each year,	05
(The clerk is entitled to receive for searching and certifying the title <i>of</i> and incumbrances <i>upon</i> real estate, ten cents for each conveyance and incumbrance certified by him, instead of the former fees allowed, provided that such fees in no case amount to less than fifty cents nor more than five dollars.) <i>Laws of 1840, chap. 342. 2 R.S. 827, 4th ed.</i>	
For entering in a book the bond of every collector,	12½
For searching for such bond,	06
For entering satisfaction of such bond,	12½
For receiving and filing the papers of any insolvent, or relating to the proceedings against any absent, concealed, absconding or imprisoned debtor, in each case, but such papers are not to be charged as having been separately filed.	12½
For searching for such papers, for each year,	06
For determining and certifying the surety of any sheriff,	50
For every report upon the title of parties in partition,	1 00
For every report respecting the incumbrances upon the estate or interest of any party in partition, made by order of court,	1 00

For investing the proceeds of the sale of any estate under the proceedings in partition, pursuant to order of court, one-half of one per cent upon any sum not exceeding two hundred dollars, and one-quarter of one per cent on any excess.	
For receiving the interest on such investments and paying over the same, one-half of one per cent.	
For his attendance in canvassing the votes given at any election,	\$2 00
For drawing all necessary certificates of the the result of such canvass, for each folio,	18
For all necessary copies of the same, for each folio,	09
For recording proceedings and certificates of election, for each folio,	10
For making and transmitting certified copies of the returns of the town superintendents, for each folio,	06
For giving notice to the governor of persons who have taken the oath of office, for each name,	03
For giving such notice, when persons have neglected to take the oath of office, or when they have neglected to file or renew any security required of them, and in all cases of vacancy in office required to be reported to the governor, for each name,	06
For notifying persons appointed to office,	25
(Incidental expenses in giving such notice will be paid by the comptroller.)	

For searching for any bail piece,	\$0 12 $\frac{1}{2}$
For recording every certificate of incorporation, authorized by law to be recorded, .	75
For entering in the minutes of a court a license to keep a ferry, and for a copy thereof,	1 00
For entering a recognisance from any person authorized to keep a ferry,	75
For entering a satisfaction of a judgment when actually done,	12 $\frac{1}{2}$
<i>Laws of 1840, chap. 381. 2 R. S. 829, 4th ed. Naturalization.] For all the services of the clerk on the first application of an alien, including his oath of intentions to become a citizen, the record and certificate of the same,</i>	
	25
For all the other services of the clerk upon the completion of all the papers necessary for naturalization,	50
<i>Fees in civil actions.] For the services at the trial of a cause, denominated by the Code "trial fee,"</i>	
	1 00
For entering judgment,	50
For taking affidavits, each,	12 $\frac{1}{2}$
For copies of papers in an action, for each folio,	05
For certifying the same,	25
For docketing judgment and filing transcript from another county,	06
<i>Other services.] For drawing grand and petit jurors,</i>	
	2 00
For notice to the sheriff and to the judge, and to publish for each,	25

For swearing a jury in a criminal cause, . \$0	19
For swearing witness in such cause, each,	06
For entering the sentence of a person convicted of crime,	12 $\frac{1}{2}$
For a certified copy of same,	12 $\frac{1}{2}$
For swearing each witness in the court of oyer and terminer or sessions,	06
For calling and swearing a jury in the same courts,	19
For entering a recognizance,	12 $\frac{1}{2}$
For entering notice of lis pendens,	18
For filing and entering a chattel mortgage,	12
For searching for the same,	06

There are a variety of services required of the clerk, the compensation for which is audited by the board of supervisors. Such compensation resting in the discretion of each board, it is deemed impracticable to give in this work any definite amount as a proper remuneration for such services.

They consist in the services of the clerk for distributing school blanks, state reports, legislative documents, session laws, examining town clerk's returns and making lists of justices, making indices to books, making abstract of the reports of town superintendents, filing and arranging papers, and a variety of other duties connected with the office.

Naturalization.] It has been decided in a recent case that it is the duty of the court and not the clerk, to admit *aliens* to the rights of citizenship. The power conferred upon the courts in that re-

spect being judicial and not ministerial or clerical.
10 *How. Pr. R.* 246. *Matter of Clark.* 18 *Barb.* 444.

CHAPTER XVIII.

OF THE COUNTY TREASURER.

The county treasurer is elected at a general election and holds his office for three years. He enters on the duties of his office, except in the county of Kings, on the first day of January next after his election. *Laws of 1849, chap. 360.* 1 *R. S.* 326, 4th ed.

Vacancies.] Vacancies are supplied by appointment by the board of supervisors. Treasurers so appointed will enter on their duties at once, and will hold their office until the first day of January next succeeding the general election after their appointment. *Id.*

Bond.] Before he enters on the duties of his office, he must give a bond to the board of supervisors of his county, with two or more sufficient sureties, to be approved of by said board, and in such sum as they may direct, which bond must contain a condition that he will faithfully execute the duties of his office, and pay according to law all moneys which may come into his hands as treasurer, and render a just and true account thereof to the board of supervisors or to the comptroller, when required. His bond, with the approbation of such bond endorsed thereon by their clerk, must be filed in the office of the county clerk.

He must take the constitutional oath. (*Appendix, No. 1.*) He has until the 15th day of December next after his election, to file his official bond and take the oath. 1 *R. S.* 685, 4th ed. *Laws of 1850, chap. 346.* The board fix the penalty of the bond at their first annual meeting next after the election of the treasurer. His bond may be approved by the county clerk and chairman of the board of supervisors in the recess of the board; this applies, however, to those counties only where the annual meeting of the board is held before the general November election. *Laws of 1850, chap. 364.*

To receive and pay over moneys.] It is the duty of the county treasurer to receive all moneys belonging to the county, from whatsoever source derived, and all moneys belonging to the State which by law are directed to be paid to him, and to pay and apply such moneys as the law requires. For refusing to pay over moneys, without just cause, he is liable to an action. *Boyce v. Russel, 2 Cow. 444.*

Accounts.] He must keep just and true accounts of the receipts and expenditures of the moneys which come to his hands by virtue of his office, in books to be provided for that purpose at the expense of the county. 1 *R. S.* 685, 4th ed.

Account with comptroller.] On or before the first day of March in each year, he must transmit to the comptroller a statement of all moneys received by him during the preceding year, for penalties belonging to the people of this State; and it is his duty, at the same time, to pay to the treasurer of this State the amount of such penalties, after de-

ducting his compensation, in the same manner as state taxes are directed to be paid.

Accounts to supervisors.] At the annual meeting of the board of supervisors, or at such other time as they may direct, he must exhibit to them all his books and accounts, and all vouchers relating to the same to be audited and allowed.

Books &c. to be delivered, and moneys paid to successor.] Upon his death, resignation or removal from office, all books and papers belonging to his office, and all moneys in his hands by virtue of his office, must be delivered to his successor in office, upon oath, or in case of his death, upon the oath of his executors or administrators.

Penalty for neglect.] If the treasurer, or in case of his death, if his executors or administrators refuse or neglect to deliver such books, papers and moneys upon oath, when lawfully demanded, every such person will forfeit for the use of the county the sum of twelve hundred dollars.

Commission.] He is entitled to retain a commission of one per cent on every dollar which he receives and pays: one-half of such commission for receiving and the other half for paying. He is chargeable with interest on all sums in his hands which he omits to account for at the annual meeting of the supervisors of his county. He is not entitled to a commission on moneys *not* received by him, for instance, *bad taxes*, and taxes levied on lands of non-residents, returned to the comptroller's office. *Supervisors of Chenango v. Birdsall*, 4 Wend. 453. It is competent for the board of supervisors to fix his compensation at a less sum than one-

half of one per cent. His compensation may not in any year exceed the sum of five hundred dollars. *Laws of 1846, chap. 169. 1 R. S. 686, 4th ed.* It seems that the act passed in 1843, providing for the compensation of the treasurer in the county of Oswego, was superseded by the act of 1846 above cited. *See note to 1 R. S. 686, 4th ed.* The act of 1846, regulating the compensation of the county treasurer, does not apply to the county of New-York, Albany or Kings.

Kings.] In the county of Kings the treasurer enters on his duties on the first Tuesday in August next succeeding his election. His salary may not exceed one thousand dollars. *Laws of 1848, chap. 180.*

Monroe county.] In Monroe county his compensation is left to the discretion of the board of supervisors. *Laws of 1849, chap. 162.*

Erie.] For the law regulating his compensation in Erie county, see *Laws of 1850, chap. 106.*

When his bond may be sued.] When the board of supervisors have knowledge that the condition of the county treasurer's bond has become forfeited, and when required by the comptroller, they must cause an action to be commenced on such bond. *1 R. S. 686, 4th ed.*

To receive moneys from the district attorney.] District attorneys are required on or before the first Tuesday of October in each year, to file with the county treasurer an account under oath of all moneys received by them as district attorneys during the preceding year, and at the same time pay over such moneys to such treasurer; and should they neglect or refuse, it becomes the duty of the coun-

ty treasurer to cause a suit to be instituted for the recovery of such moneys for the benefit of the county. 1 *R. S.* 701, 4th ed.

To charge collector.] The county treasurer having received from the boards of supervisors the accounts of moneys which the several collectors are required to collect, and the list of the names of the several collectors, will open an account with each collector, charging him with the amount he is directed to collect. 1 *R. S.* 722, 4th ed.

For proceedings when the collector neglects to pay over moneys, the county treasurer is referred to pages 162, 163 and 164 of this work.

The duties of the county treasurer have been very materially changed by the legislation of 1855 respecting taxes upon lands of non-residents. He is referred to the act, which is published in full in this work, immediately preceding the forms, for his duties under that law. '

In 1846 an act was passed entitled "An act to equalize taxation." *Laws of that year*, page 466. It had reference more particularly to the taxation of rents.

Duty of county treasurer under act of 1846.] When it appears by the return of a collector to the county treasurer that any tax imposed under the provisions of the act of 1846 remains unpaid, such county treasurer is required to issue his warrant to the sheriff of such county where any real or personal estate of the person upon whom such tax is imposed may be found, commanding him to make of the goods and chattels and real estate of such person, the amount of such tax, together with one

dollar for the expense of issuing such warrant, and to return the warrant to the treasurer issuing the same, and to pay to him the money which shall be collected by virtue thereof, by a certain time therein specified, not less than sixty days from the date of such warrant.

Provision in case of warrant being returned unsatisfied.]
If such warrant be returned unsatisfied in whole or in part, the county treasurer, under the direction of the board of supervisors of his county, may file a bill in his name of office in the supreme court, whatever may be the amount so remaining unsatisfied against the person against whom such warrant was issued and any other person having possession of his property, for the discovery and sequestration of such property; and on the filing of such bill, the court will order such part of the property of the person upon whom the tax specified in the warrant was imposed, as shall be necessary for the purpose of satisfying the taxes in arrear with the cost of prosecution, to be sequestered, and may order and direct such other proceedings as may be necessary to compel the payment of such tax and costs. *Laws of 1846, page 466.*

Debts owing for the purchase of real estate, taxable.]
Debts owing by inhabitants of this state to persons not residing within the United States, for the purchase of real estate, are deemed personal property within the town or county where the debtor resides, and as such are liable to taxation in the same manner and to the same extent as the personal property of citizens of this State.

Agents of non-resident creditors to report to county treasurer.] Agents residing in this State of any non-resident creditor having debts owing to him of the description mentioned above, are required, on or before the twenty-fifth day of July in each year, to furnish to the county treasurer of each county where such debtor resides, a true and accurate account of debts of the description mentioned above, which were owing on the first day of January preceding, to the principal of such agent, in each town in their county, which must be verified by the oath of such agent taken before any officer authorized to administer oaths.

Penalty for not making report.] Any such agent who refuses or neglects without good and sufficient cause to furnish such list, forfeits the sum of five hundred dollars to the use of each county in which such debtor resides, to be sued for by the treasurer of such county in his name of office, and to be recovered upon proof that the principal of such agent had debts owing to him by inhabitants of such county, of the description above mentioned, and that the existence of such debts was known to such agent.

Abstract to be sent to assessors.] The county treasurer on receiving such statements, must immediately make out and transmit to the assessors of the several towns of his county, in which any such debtor resides, an abstract or copy of so much of such statement as relates to the town of such assessors, with the name of such creditor.

Unpaid taxes how collected.] When it appears that any tax imposed on a debt owing to a person not

residing in the United States; remains unpaid, the county treasurer is required after the expiration of twenty days from the return of such collector, to issue his warrant to the sheriff of any county in this state, where any debtor of such non-resident creditor may reside, commanding him to make of the goods and chattels and real estate of such non-resident the amount of such tax, to be specified in a schedule annexed to the said warrant, together with his fees, and the sum of one dollar for the expense of issuing such warrant, and to return the said warrant to the treasurer issuing the same, and to pay over to him the money which shall be collected by virtue thereof, except the said sheriff's fees, by a certain day therein to be specified, within sixty days from the date of such warrant.

Warrants, how made out.] The taxes upon the several debts owing to the non-resident, must be included in one warrant, and the taxes upon several debts owing to different non-residents may be included in the same warrant; and where several non-residents are included in the same warrant, the sheriff will be directed to levy the sums specified in the schedule thereto annexed, upon the personal and real property of the non-residents respectively, opposite to whose names, respectively, such sums shall be written, together with the sum of fifty cents upon each non-resident, for the expense of such warrant.

Proceedings when warrant returned unsatisfied.] If any such warrant should be returned unsatisfied in whole or in part, the county treasurer, or in the

city and county of New-York, the comptroller therein, under the direction of the board of supervisors, may obtain an order from a judge of the supreme court, or a county judge of the county to which said warrant was issued, requiring such non-resident, or any person having property of such non-resident, or indebted to him, to appear and answer concerning the property of such non-resident, and the same remedies and proceedings may be had in the name of the county treasurer or comptroller, before the officer granting such order, and with the like effect as are provided by the statute in case of a judgment debtor after the return of an execution against him unsatisfied in whole or in part.

Expenses of treasurers and assessors, how paid.] The expenses of the county treasurers, and such compensation as their boards of supervisors may allow them for their services in this respect, are county charges; and the expenses and charges for the services of assessors in this respect, are town charges, and must be audited and paid as such. *Laws of 1851, page 721. 1 R. S. 749, 4th ed.*

To notify comptroller of the non-payment of taxes by corporations.] Upon receiving from the collector the affidavit required to be made by him in respect to the non-payment of taxes by incorporated companies, the county treasurer must certify the facts to the comptroller. He gives such treasurer credit for the amount so returned and certified, the same as in the case of taxes on the lands of non-residents. *1 R. S. 754, 4th ed.*

To distribute forms.] When furnished with blank

forms for the use of assessors, he must attend to the distribution of the same, by depositing such forms in each town clerk's office in the county, and in the cities by causing them to be delivered to the assessors personally. 1 R. S. 765, 4th ed.

School moneys.] Each county treasurer, on the first day of February in each year, is entitled to receive, by making application, the portions of school money apportioned to his county. It is his duty to apply for such money as soon as the same is payable. 1 R. S. 879, 4th ed.

To give notice of amount apportioned.] Upon receiving the money he is required immediately to give notice to each town superintendent in his county, of the amount apportioned to each town or city, and will hold the same subject to the order of the town superintendents. *Id.*

Moneys not applied for, how disposed of.] Should a town superintendent neglect to apply for the money, he will retain the same, to be added to the moneys next received for distribution. *Id.*

Annual tax for school purposes.] The sum of eight hundred thousand dollars is collected annually in this State, and is paid over to the respective county treasurers, subject to the order of the superintendents of public instruction, for the use of common schools. *Laws of 1851, chap. 151.* 1 R. S. 880, 4th ed.

The mode of disposing of the money thus raised is mentioned in the chapter on the duties of town superintendents.

Penalties under the poor laws.] Penalties collected for a violation of chapter 20, part 1, title 1, of the

revised statutes, relating to the relief and maintenance of the poor, must be paid to the county treasurer. He must credit the same to the town by whose officers such penalties have been collected, if the town be liable to the support of its own poor, or to the *county*, when collected by the county superintendents. Persons collecting such penalties and omitting to pay them over when demanded, are liable to an action, which may be maintained by the county treasurer in his name of office. 2 R. S. 23, 4th ed. 1 R. S. 620, 1st ed. For the further duties of the county treasurer under the poor laws, see Chapter VII.

Funds transferred from the clerk of the court of appeals to him.] In 1848, an act was passed transferring all the funds and securities then held by the clerk of the court of appeals, by virtue of his office, to the several county treasurers, and the chamberlain of the city of New-York, each of whom became vested with the title of such portion of the same as were delivered to him. By that act also, certain funds and securities held by the New-York Life Insurance and Trust Company, were also transferred to those officers. They have authority to sue for and collect the same in their names of office respectively, in the same manner and to the same effect as the clerk of the court of appeals could do; and all the provisions of law conferring any power or authority over such securities upon such clerk, or directing the manner of receiving, safe keeping depositing, investing or paying out the moneys arising from such securities, or now in deposit in any bank, arising therefrom, and in regard to the

investment, safe keeping or transfer of any stock, moneys or securities brought into court, are deemed to apply to such county treasurer, and to the chamberlain of the city of New-York respectively; and also all the provisions of the Revised Statutes prescribing the fees of the register and assistant register of the court of chancery, for the services rendered by them in respect to such securities or moneys, likewise apply to such county treasurer and chamberlain of the city of New-York, respectively. *Laws of 1848, page 406.* The county treasurers are entitled to receive for their services in regard to the funds transferred to them from the clerk of the court of appeals, one half of one per cent. on every dollar of such funds which they may pay out. *Laws of 1849, chap. 357. 2 R. S. 373, 4th ed.*

Moneys deposited by order of court.] The county treasurer is required at each annual session of the board of supervisors in his county, to report a statement of all the bonds and mortgages and other securities and moneys received and held by him under the provision of the act above mentioned. He must state the amount of such securities respectively, that is to say, the amount in each case or proceeding, instead of the aggregate amount of all, and the names of the persons interested therein. Upon the coming in of such statements, the board may increase the amount of his bail if they deem it proper so to do. *Laws of 1848, chap. 277. 2 R. S. 372, 4th ed.*

Powers as public administrators.] The county treasurer in each of the counties of this state, by virtue of

his office, has authority to collect and take charge of the assets of every person dying intestate, where such assets amount to one hundred dollars or more, either in his county or out of it, upon which no letters of administration have been granted, in the following cases:

1. Whenever such person dies, leaving assets in the county of such treasurer, and there is no widow or relative in the county entitled or competent to take letters of administration on such estate.

2. Whenever assets of any person so dying intestate, shall, after his death, come into the county of such treasurer, and there shall be no person entitled or competent as above mentioned to take administration of such estate.

This does not apply to the county of Richmond. In the above cases, intestacy will be presumed until a will is proved and letters testamentary issued thereon.

For the purpose of collecting and preserving such assets, he may maintain suits in his name of office and without any other authority, in the same manner as any executor may by law.

In certain cases to secure effects.] Although there may be a widow or relative of any such intestate entitled to administration on his estate, in the county, yet, if due proof be made to the surrogate of the county that there are creditors or relatives of the deceased, residing more than one hundred miles distant from the residence of such surrogate, who are interested in the distribution of the estate, and that the effects of the deceased are in danger of

waste or embezzlement, he may grant an order to the treasurer of the county, authorizing him to seize and secure such effects, or any part thereof; which order will vest in him all the powers mentioned above.

Concealed effects.] If any of the effects whereof the county treasurer is authorised to take charge are concealed or withheld, he is entitled to the same process from the surrogate, or county judge of the county, to discover and seize the same, on the same evidence and on like terms, as the public administrator in the city of New-York. 2 R. S. 130, 1st ed.; p. 311, 4th ed. *Laws of 1847, chap. 280.*

Perishable property.] Any property that may be in a perishing condition, taken into the charge of such treasurer, may be sold by him at auction, on obtaining an order for that purpose from the surrogate of the county, which will be granted on due proof of the facts, and will specify the time and manner and the notice of such sale.

Property to be appraised.] Upon taking charge of the property of any intestate, the county treasurer must cause the same to be appraised by two disinterested appraisers, to be appointed by the surrogate as in other cases.

Proceedings.] The appraisers make a true inventory of the property, and of the true value of each article, duplicates of which they subscribe.

Inventory.] Within ten days after taking charge of any property, as above mentioned, the county treasurer must return an inventory thereof, signed

and verified by the appraisers, to the surrogate of the county, to be by him filed; and must accompany the same with his affidavit that the same contains a true and just account of all the effects of the deceased which have come to his hands or knowledge.

Penalty for neglect to return.] The time for making such return, may, on good cause shown, be extended by the surrogate ten days longer. Any county treasurer who neglects to make such return within the time above prescribed, or within the time so extended, of all the effects of any deceased person which have come to his hands, forfeits five hundred dollars, to be sued for and recovered by the county superintendents of the poor for the use of the poor, and forfeits his office. 2 R. S. 312, 4th ed.

Bond, &c.] At the time of making such return, the county treasurer must give the bond required by law to be given by any collector of an estate, appointed by a surrogate, with such sureties and in such penalty as the surrogate may approve. The surrogate thereupon issues letters to the treasurer, authorising him to collect and preserve the estate of the deceased. *Id.* Upon letters testamentary or of administration being issued to any person claiming them, all control and authority of the county treasurer over the estate of the deceased ceases, and he must deliver all the assets in his hands, belonging to such estate, to the person so appointed, after deducting the expenses incurred in securing and preserving the assets, in

obtaining letters to collect, and in publishing the notice above required, and a reasonable compensation for his services, not exceeding three dollars for each day necessarily employed, to be allowed and taxed by the surrogate, on oath of the collector.

Bound to accept them.] It is the duty of the county treasurer to receive and accept such letters of administration, and to give the bond required. *Id.*

Evidence of his authority.] Such letters of administration and the record thereof, and a transcript of such record, duly certified, is conclusive evidence of the authority of the county treasurer in all cases in which the surrogate has jurisdiction. *Id.*

Power of county treasurer before letters.] Until letters of administration are granted as aforesaid, the county treasurer will not proceed further in the administration of any estate, than to pay the funeral charges of the deceased, to collect debts, to take possession of and secure his effects, to sell such thereof as may be perishable, and to defray the expenses of the proceedings required by law.

Authority how superseded.] The powers and authority of the county treasurer in relation to the estate of any deceased person, will be superseded:

1st. By the production of any letters testamentary that may have been granted before, or that may be granted subsequent to his becoming vested with the authority of an administrator, upon the same estate.

2d. By the production of any letter of administration that shall have been granted to any other person, upon the same estate, before the said coun-

ty treasurer became vested with the powers of an administrator thereon.

3d. By the production of any letters of administration issued by the surrogate of any county in this state, of which the deceased was a resident at the time of his death, granted after the county treasurer may have become vested with the powers of an administrator upon the estate of such deceased.

Effect thereof.] On his authority being superseded, he must deliver over to the executor or administrator so producing such letters, all the assets of the deceased in his hands, after deducting therefrom the allowance for his services, and the expenses incurred, to be taxed and allowed by the surrogate. All acts done by such county treasurer in good faith, previous to such notice, will be valid; and all suits commenced by him may be continued by and in the name of the executor or administrator who may succeed him in the administration of the estate, in relation to which such suit may be brought.

Powers as administrators.] Upon receiving letters of administration, the county treasurer is vested with all the powers and rights of other administrators, and will be subject to the same duties and obligations, except as herein otherwise mentioned.
Id.

Account to comptroller.] The county treasurer of every county must exhibit to the comptroller of the State, at the time of rendering his account of taxes, in each year, a statement, on oath, of all the moneys received by him for commissions, services

and expenses, and of the total amount of his receipts and expenditures in each case in which he has taken charge of and collected any effects, or in which he has administered on any estate, during the preceding year; with the name of the deceased, in addition, the place of his residence at the time of his death, if the same be known, and the place from which he came, if he was not a resident of this State at the time of his death. *Id.*

To publish statement, penalty for neglect.] The county treasurer must cause a copy of every statement made by him, to be published for three weeks, once in each week, in a newspaper printed in his county, and in the state paper; the expense of which must be retained by him out of any balance in his hands payable into the state treasury. For a neglect to comply with this provision, he forfeits one hundred dollars, to be recovered by the attorney general, for the use of the people of this State. The comptroller must give notice to the attorney general of every such omission.

When responsible for money stolen.] It was decided in the case of *The Supervisors of Albany v. Dow*, 7 Hill, 583, that where moneys received by a county treasurer were feloniously stolen from his office before he was requested to pay out the same, without any fault or negligence on his part, that no action would lie on his official bond. The members of the court of errors were equally divided upon the question, and hence the judgment of the supreme court was affirmed; but such decision it is believed would have no binding force as a precedent. *See note of Mr. Hill, same case.*

The case of Muzzy v. Shattuck seems to settle the law the other way. 1 *Denio*, 233. Mr. Hill remarks "that the case of Muzzy v. Shattuck, which holds that such an officer would be responsible although the moneys were feloniously stolen from him without any fraud or fault on his part, was reviewed by the court of errors and unanimously affirmed."

May refuse to pay claims under certain circumstances.] Should the board of supervisors audit and allow a claim over which they have no jurisdiction, and should that fact appear upon the face of the claim presented to the county treasurer for payment, it seems that he has a right to withhold payment. *The People v. Lawrance*, 6 *Hill*, 244.

The proper remedy of a party against such treasurer who neglects to pay claims audited and allowed by the board of supervisors, is by *action*, and not by *mandamus*. 2 *Hill*, 45. 6 *Hill*, 244.

The county treasurer, having received any goods or valuable thing found upon persons on whom inquests are held, from the hands of a coroner, as mentioned in Chapter XIX, is required to convert the same into money as soon as practicable, and place the same to the credit of the county of which he is treasurer. And if the same is demanded within six years by the legal representatives of the person on whom the same was found, he will, after deducting the expenses incurred by the coroner, and all other expenses of the county in relation to the same matter, pay the balance to such legal representative. 2 *R. S.* 926, 4th ed.

CHAPTER XIX.

OF CORONERS.

How chosen.] Coroners are chosen by the electors of the several counties once every three years, and as often as vacancies may happen. Each county, except New-York, is entitled to four coroners. 1 R. S. 319, 4th ed.

Oath.] Before he enters on the duties of his office, and within fifteen days after notice of his election, he must take the constitutional oath, and file the same in the county clerk's office. (*Form, Appendix, No. 1.*) 1 R. S. 120, 1st ed.; page 331, 4th ed.

Residence.] He must reside within the county for which he was elected.

Resignation.] Should he desire to resign his office, his resignation must be made to the governor. 1 R. S. 332, 4th ed.

Not to act as an attorney.] He is prohibited by statute from practicing as a counsellor, solicitor, or attorney, in any court of law or equity, while holding his office. 1 R. S. 109, 1st ed.; 321, 4th ed.

May be removed by the governor.] Coroners may be removed from office by the governor. They are entitled to a copy of the charges against them, and have the right of being heard in their defence. 1 R. S. 334, 4th ed.

When coroners are to do the duties of sheriff.] It is provided by the revised statutes, see volume 1, 373, second edition, as follows:

“§ 78. Whenever a vacancy shall occur in the

office of sheriff of any county, and there shall be no under sheriff of such county then in office, or the office of such under sheriff shall become vacant, or he become incapable of executing the same before another sheriff of the same county shall be elected or appointed, and qualified, and there shall be more than one coroner of such county then in office, it shall be the duty of the first judge of the county, forthwith to designate one of such coroners to execute the office of sheriff of the same county, until a sheriff thereof shall be elected or appointed and qualified. Such designation shall be by instrument in writing, and shall be signed by the judge, and filed in the office of the clerk of the county, who shall immediately give notice thereof to the coroner."

His duty and powers.] "§ 79. The coroner so designated within six days after receiving such notice, shall execute with sureties a joint and several bond to the people of this State, which shall be in the same amount and with the same number of sureties, and be approved of in the same manner, and be subject in all respects to the same regulations as the security required by law from the sheriff of such county. And after the execution of such bond, the coroner so designated shall execute the office of sheriff of the same county until a sheriff shall be duly elected or appointed, and qualified."

When second or other designations to be made.] "§ 80. If the coroner so designated shall not within the time above specified, give such security as is above required, it shall be the duty of the county

judge to designate in like manner another coroner of the county, to assume the office of sheriff; and in case it shall be necessary so to do, the county judge shall proceed to make successive designations until all the coroners of the county shall have been designated to assume such office. And all the provisions contained in the two last sections shall apply to every such designation, and to the coroner named therein.

Where but one coroner, his duty and powers.]

“§ 81. Whenever any such vacancies shall occur in the offices, both of sheriff and under sheriff of any county, if there shall be but one coroner of such county then in office, such coroner shall be entitled to execute the office of sheriff of the same county, until a sheriff shall be duly elected or appointed, and qualified; but before he enters upon the duties of such office, and within ten days after the happening of the vacancy in the office of the under sheriff, he shall execute with sureties, a joint and several bond to the people of this State, in the same amount, and with the same number of sureties as may be required by law from the sheriff of such county, and such bond shall be subject in all respects to the same regulations as the security required from the sheriff.

When judge to appoint.] “§ 82. If such coroner solely in office on the happening of such vacancies, shall neglect or refuse to execute such bond within the time above specified, or if all the coroners where there are more than one in office on the happening of such vacancies, shall successively neglect or refuse to execute such bond within

the time required, it shall be the duty of the county judge of the county in which such vacancies shall exist, to appoint some suitable person to execute the office of sheriff of the same county until a sheriff shall be duly elected or appointed and qualified."

"§ 83. Such appointment shall be in writing under the hand and seal of the county judge, and shall be filed in the office of the county clerk who shall forthwith give notice thereof to the person so appointed."

Duty and power of person appointed.] "§ 84. The person so appointed shall within six days after receiving notice of his appointment, and before he enters on the duties of the office, give such security as may be required by law of the sheriff of such county, and subject to the same regulations; and after such security shall have been duly given, such person shall execute the office of sheriff of the county until a sheriff shall be duly elected or appointed, and qualified."

"§ 85. Until some coroner designated, or some person appointed by the county judge shall have executed the security above prescribed, or until a sheriff of the county shall have been duly elected or appointed and qualified, the coroner or coroners of the county in which such vacancies shall exist, shall execute the office of sheriff of the same county."

General provisions.] "§ 86. Whenever any under sheriff, coroner, coroners or other person shall execute the office of sheriff pursuant to either of the eight last sections, the person so executing such

office, shall be subject to all the duties, liabilities and penalties imposed by law upon a sheriff duly elected and qualified.

Wrecks.] The coroner has the same power in regard to the preservation of wrecks and wrecked property, as is conferred on sheriffs and wreck-masters. When wrecked property is found, and no owner or other person entitled to the possession of such property appears, it becomes the duty of the coroner to pursue all proper measures for securing and saving such property, to take possession of the same in whose hands soever the same may be, in the name of the people, to cause it to be appraised by indifferent persons, and to keep the same safely to answer the claims of the lawful owner or possessor. 1 R. S. 691, 1st ed. 2 R. S. 100, 4th ed.

If he finds the property in a perishable state so as to render the sale expedient, he must apply to the county judge of the county, by a petition supported by an affidavit of the facts, for an order authorizing such sale, which will be granted if a proper case is made out. Persons finding wrecked property, must deliver it to a sheriff, coroner or wreck-master, within twenty-four hours, or they will forfeit treble the value of the goods, and be deemed guilty of a misdemeanor.

Sale, proceeds how disposed of.] The order being granted, the coroner will sell the property at public auction, in the manner and at the time directed in the order, and the proceeds after deducting the expenses, which are to be adjusted and allowed by the county judge making the order, must

be paid to the treasurer of the county where the property was found. 2 R. S. 100, 4th ed.

What will be deemed wrecks.] A wreck is defined to be such goods, as after a shipwreck, are cast upon the land, by the sea, and left there, within some county, so as not to belong to the jurisdiction of the admiralty, but to the common law. *Bouvier's Law Dic. Title, wreck. Baker v. Hoag*, 7 Barb. 115, overruling 3 Barb. 203. The proceedings in regard to wrecks are fully pointed out in the Revised Statutes, vol. 1, 690, 1st ed.; vol. 2, page 100, 4th ed.

Actions against.] Actions against a coroner upon any liability incurred by the doing of an act in his official capacity, and in virtue of his office, or by the omission of an official duty including the non-payment of money collected on execution, must be brought within three years. Actions for an escape must be brought within one year. *Elliott v. Cronk*, 13 Wend. 35. *Shepard v. Hoyt*, 7 Hill, 198. 2 R. S. 497, 4th ed. *Morris v. Van Vorst*, 19 Wend. 283.

Process against sheriff to be executed by coroners.] When the sheriff of a county is a party in a suit, all process in such suit, except when otherwise provided by law, must be executed by the coroner of the county to whom the same shall be delivered, in the same manner in all respects, subject to the same obligations and liabilities, and with the like authority, and entitled to the same privileges as are prescribed by law in respect to sheriffs, except in cases otherwise specially provided for.

One coroner may act.] When process is directed to the coroners of a county generally, the same may be executed and a return made and signed by any

one of such coroners; but such act or return will in no degree prejudice the other coroners not participating therein.

Powers on arresting sheriff.] If process for arresting the sheriff of the county be delivered to a coroner, he must execute the same in the manner prescribed by law in respect to the execution of similar process by sheriffs, and is authorized to take a bond on the arrest, or a bond for the jail liberties to himself, by the name of his office, in the same cases and in the same manner in which a sheriff would be authorized to take the same; which bonds will have the like effect, and be subject to the same provisions as bonds taken in like cases by sheriffs, and the proceedings, rights and liabilities thereon will be the same in all respects.

Imprisoning sheriff.] If a sheriff on being arrested by a coroner on civil process requiring him to be held to bail, refuse or neglect to give the bond required by law to entitle him to be discharged, or if a sheriff be arrested on execution against his body, or on attachment, he must be confined by the coroner in some house situated within the liberties of the jail of the county, other than the house of such sheriff, or the jail of such county, in the same manner as sheriffs are required by law to confine prisoners in the jails of their counties respectively. Such house thereupon becomes the jail of the county for the use of such coroner, and all laws relating to the jails of counties will be applicable to the same while such sheriff remains confined therein.

Liability for escape.] For any escape of the sheriff

from such house, the coroner is liable in the same manner and to the same extent as sheriffs for the escape of their prisoners, and may plead and give in evidence the same matters allowed to sheriffs in similar actions.

Sheriff to have liberties, &c.] A sheriff so confined will be admitted to the liberties of the jail of the county established for other prisoners, in the same cases, and upon executing the like bond to the coroner in whose custody he may be, as provided in other cases. For any escape of such sheriff from such liberties, the coroner will be liable in the same manner and to the same extent as sheriffs, for similar escapes, and may plead and give in evidence the same matters allowed by law to sheriffs.

Proceedings on bond.] The coroner may prosecute any such bond taken by him, and will be entitled and subject to all the provisions of law in respect to similar bonds taken by sheriffs; and such bonds may be assigned by him to the party at whose suit such sheriff has been arrested, and the same proceedings will be had thereon in all respects, as on bonds taken and assigned by sheriffs in similar cases.

Where sheriff is plaintiff.] If any person be arrested by a coroner on process issued in a suit in which the sheriff of the county is a plaintiff, he must be committed to the common jail of the county in cases where a commitment is required by law; but the coroner will not be liable for any escape of such prisoner from such jail after he has been committed.

How kept ; bail bond.] Such prisoner when so committed must be kept in all respects as other prisoners committed on civil process, and will be entitled to be discharged if he be committed on *mesne* process, on executing a bond to the coroner, in the same manner, and in the same cases in which such bond is required to be given to a sheriff, which will have the like effect, and be proceeded on in the same manner in all respects.

Bonds for liberties.] Such prisoner will be entitled to the liberties of the jail in the same cases as other prisoners, on executing to the coroner a bond in all respects similar to that required to be given to sheriffs, which will have the like effect, and must be assigned and proceeded on in the same manner.

Escape from liberties.] For any escape of such prisoner from such liberties, the coroner must be answerable in the same manner and to the same extent as sheriffs, for similar escapes, and may plead and give in evidence the same matters. 1 *R. S.* 442, 1st ed. 2 *R. S.* 686, 4th ed.

When an action for the delivery of personal property is brought by or against the sheriff of a county, the process in the cause must be executed by a coroner, except the execution, which may be awarded and executed as in other causes. 2 *R. S.* 768, 4th ed.

Coroner's court.] The office of coroner is one of great antiquity. In ancient times his court was called a court of record. 4th *Just.* 271. It cannot strictly be so called at the present day.

Inquisition, when.] When the coroner receives no-

tice that any person has been slain, or has suddenly died, or has become dangerously wounded, or has been found dead, under such circumstances as to require an inquisition, it becomes the duty of the coroner to repair to the place where such person may be, and forthwith to summon not less than nine, nor more than fifteen persons, qualified by law to serve as jurors, and not exempt from such service, to appear before such coroner *forthwith*, at such place as he may appoint, to make inquisition concerning such death or wounding. *Laws of 1847, chap. 118. 2 R. S. 925, 4th ed. (Form for the precept for a jury, see Appendix.)*

The jury having appeared, or at least six of them, the coroner designates one of the number to act as foreman, and administers to him the following oath: "You shall diligently inquire, and true presentment make, of all such matters and things as shall be given you in charge, on behalf of the people of the State of New-York, touching the death (*or wounding*) of A. B., now lying dead (*or wounded*), of whose body you shall have the view, and how, and in what manner, and when, and where the said person came to his death (*or was wounded*), and who such person was. You shall present no man from hatred, malice, or ill will, nor spare any through fear, favor, or affection, but a true inquisition make, according to the evidence, and a true verdict give according to the best of your knowledge and ability. So help you God." He then swears those remaining (two or three at a time), as follows: "The same oath which your foreman has taken on his part, you

and each of you shall well and truly observe and keep on your part. So help you God."

The coroner may then charge the jury upon such points relating to the case as may facilitate their deliberations, taking care to disclose no part of the evidence which he may expect to produce, tending to implicate any person connected with the matter under consideration, who may be at large.

Oath to witness.] Upon the appearance of a witness to be sworn, the coroner should take down his name, residence, and occupation, and then swear him as follows: "The evidence you shall give to this inquest touching the death (*or wounding*) of A. B., (*or if the name is unknown,*) of the person whose body you have viewed, shall be the truth, the whole truth, and nothing but the truth. So help you God."

Caption of coroner's minutes.] The coroner should prepare a caption for the minutes of the proceedings and the testimony of the witnesses, as follows: "At a court of inquest, held at the dwelling house of _____, in the town of _____, in the county of _____, on the _____ day of _____, 18____, before J. D., one of the coroners for the said county of _____, touching the death of _____, then and there lying dead, the following testimony was given, to wit:" Then follows the evidence. After the witness has been examined, the coroner will read over his testimony that any error may be corrected, and the witness will sign it.

Adjournments.] Adjournments may be had from time to time, and should the coroner be of the opinion that to prevent contagion the body should

be interred, he may direct its interment before all or any of the witnesses are sworn, being careful in all cases to give the witnesses and the jury every opportunity for a thorough examination of the body, upon which the inquest is held.

If the coroner should be apprehensive that during any adjournment of the case any attempt might be made to give a wrong direction to the verdict of the jury, with a view of diverting attention from the guilty, and screening those who may be implicated, *indeed* in every case where there is ground to suspect that a crime has been committed, the coroner should not allow the jury to separate until after the verdict is rendered. The jurors should be attended by a constable to provide for their wants, and when an adjournment is had, he should be sworn by the coroner as follows:

Constable's oath.] "You shall well and truly keep the jurors of this jury without any meat or drink, water excepted; you shall not suffer any person to speak to them, nor speak to them yourself unless it be to ask them whether they have agreed on their verdict, until they shall agree upon their verdict. So help you God."

Subpœna.] He has power to issue subpœnas for witnesses, returnable forthwith or at such time and place as he may appoint. It is made the special duty of the coroner, to see that some surgeon or physician is subpœnaed to appear as a witness upon taking of the inquisition. *Laws of 1847, chap. 118. 2 R. S. 925, 4th ed. (Form for subpœna, see Appendix.)*

The attendance of the witnesses may be en-

forced by attachment in the same manner as the attendance of witnesses is secured in justices' courts.

Inquisition.] The jury after having had an inspection of the body of the person dead or wounded, and heard the testimony, deliver to the coroner their inquisition in writing, signed by them, in which they must certify how and in what manner, and when and where the person sodead or wounded came to his death, and who such person was, and all the circumstances attending such death or wounding, and who were guilty thereof either as principal or accessory, and in what manner. 2 R. S. 925, 4th ed. (*Form for inquisition, see Appendix.*)

When to bind over witnesses.] If the jury find that any murder, manslaughter or assault has been committed, the coroner will bind over the witnesses to appear and testify at the next criminal court at which an indictment for such offence can be found, that may be held in the county.

To apprehend persons accused.] If the party charged with any such offence be not in custody, it is the duty of the coroner to issue process for his apprehension, in the same manner that justices of the peace may do. 2 R. S. 926, 4th ed.

To return testimony.] The testimony of the witnesses, after being reduced to writing by the coroner, as above mentioned, must be returned by him, together with the inquisition and all recognizances and examinations, to the next criminal court of record held in the county. 2 R. S. 926, 4th ed.

Coroner in New-York city.] In the city of New-

York, if the coroner is unable to attend to the duties of the office at any time, any alderman or special justice of the city may perform the duties, who is clothed with the same power and authority in the case that appertains to the coroner. 2 R. S. 926, 4th ed.

To deliver moneys to county treasurer.] The coroner is required to deliver over to the treasurer of the respective counties all moneys and other valuable things which may be found on the bodies of the persons on whom inquests are held, which have not been claimed by the legal representatives of the deceased within sixty days after the inquest. Should he omit to comply with the foregoing provision, the county treasurer may put him in motion by legal proceedings. *Laws of 1842, chap. 155.* 2 R. S. 926, 4th ed.

Compensation.] The accounts of coroners are a *county charge* for such services as are not chargeable to the persons employing them. 2 R. S. 712, 4th ed.

The coroner is entitled for all services rendered by him in judicial proceedings at the same rate of compensation as is allowed to sheriffs for similar services. For confining a sheriff in any house on civil process, he is entitled to two dollars for each week, to be paid by the sheriff before he is entitled to be discharged from confinement. 2 R. S. 836, 4th ed.

He is entitled to a reasonable compensation for his services relating to inquests, including all necessary incidental expenses, which must be settled and allowed by the board of supervisors. 2 R. S. 798, 4th ed.

For his duty in regard to preparing a statement of the effects of deceased persons that may come into his hands, see page 57.

His charges respecting inquests will of course vary according to the importance of each case, hence no definite tariff of charges can be established.

The duty is often an exceedingly unpleasant and hazardous one, and for that reason the auditing board usually are liberal in their compensation.

CHAPTER XX.

OF THE SHERIFF.*

How chosen.] Sheriffs are chosen once in three years by the electors of the respective counties, and as often as vacancies may happen, and are ineligible to that office for the next three years after the termination of their office. *Const. of 1846, art. 10, sec. 1.* The sheriff while in office, is ineligible to any other office. He must continue to discharge the duties of the office until his successor is duly qualified, and until a certificate of the county clerk, that a new sheriff has qualified and given the proper securities, has been served on him. *1 R. S. 328, 4th ed. 12 Wend. 275.*

* When this work was commenced, it was the design to prepare a chapter at considerable length on the duties of the sheriff, but other subjects have so crowded on the space intended for this chapter, that it has been found impossible to go into any thing more than some general outlines of the sheriff's duty, as defined by the statutes and decisions. Besides, since this work was commenced, Mr. Crocker has prepared a work on sheriffs, and there is also extant a valuable work on sheriffs by Mr. Otis Allen,

Oath of office.] Within fifteen days after notice of his election, he must take the constitutional oath and file the same in the county clerk's office.

Bond.] Within twenty days after notice of his election, and before he enters on the duties of his office, he must give a bond with sureties, who must be freeholders. (*Form of bond, Appendix.*) In the county of New-York the bond must be in the penal sum of twenty thousand dollars, and in every other county in the sum of ten thousand dollars. The bond must be filed in the clerk's office of the county for which he was elected.

When to renew bond.] Within twenty days after the first Monday of January in each year subsequent to that in which he enters on the duties of his office, he must renew the security which he was required to give before he entered on the duties of his office. The renewed security must be in the same amount, and given in the same manner, and subject in all respects to the same regulations as the original security. 1 R. S. 697, 4th ed.

Resignation.] Should he desire to resign at any time, he must tender his resignation to the governor.

Vacancy.] Should his office become vacant by his removal on charges preferred against him, or for any other cause, the governor may supply the vacancy by appointing a person to discharge the duties of the office in the interval between the happening of the vacancy, and its being filled at the next general election. The governor may also remove the person so appointed at his own pleasure and substitute another person. *The People v. Park-*

er, 6 Hill, 49. When charges are preferred against the sheriff to the governor with a view to his removal, he is entitled to a copy of the charges and has the right to be heard in his defence.

Duty when superseded.] Upon being duly served with a certificate from the county clerk that the person elected or appointed to supersede him, has duly qualified and given the lawful security, his powers cease, and within ten days after the service of such certificate he must deliver to his successor:

1st. The jail or jails, if there be more than one, of the county, with all their appurtenances, and the property of the county therein:

2d. All the prisoners then confined in such jails:

3d. All process, orders, rules, commitments, and all other papers or documents in his custody, authorizing, or relating to the confinement of such prisoners; and if any such process has been returned, a statement, in writing, of the contents thereof, and when returned:

4th. All writs and precepts and other documents for the summoning of a grand or petit jury then in his hands, which have not been fully executed by him:

5th. All executions, attachments and final process, then in his hands, except such as the former sheriff may have executed, or shall have begun to execute, by the collection of money thereon, or by a levy on property, in pursuance thereof. 2 R. S. 357, 2d ed.; p. 682, 4th ed.

Not to practice law.] No sheriff, under sheriff, deputy sheriff, or sheriff's clerk, is permitted during his continuance in office, to practice as a counsel-

lor, solicitor or attorney, in any court of law or equity. 1 R. S. 321, 4th ed.

Under sheriff.] As soon as the sheriff enters upon the duties of the office he must appoint an under sheriff, who will hold his office during the pleasure of the sheriff. Should the sheriff die, resign, or be removed from office, the duties of his office devolve upon his under sheriff. Under sheriffs as well as other deputies, being appointed only during the pleasure of the sheriff, would by the common law, cease to be such the moment that will was determined, either by the death, removal or resignation of the person under whom they held the appointment. To remedy this common law difficulty, in 1827 an act was passed providing for the duties of the office by the *under sheriff* in all cases of vacancy, and directing the office to be executed by the coroners when there was no under sheriff. *Laws of 1827, p. 72. 10 Paige, 230.* But the *deputies* of the late sheriff do not continue in office. A *deputy* in such case cannot act as deputy *de facto* of the late sheriff, but if he continue to act under the under sheriff with his assent, but without a formal appointment it seems he may be regarded as his deputy *de facto*. *Boardman v. Halliday, 10 Paige, 223.* In case of a vacancy in the office of sheriff, the under sheriff has full power and authority to execute the office of sheriff in all respects, until a new sheriff is elected or appointed and has duly qualified. 1 R. S. 697, 4th ed.

Deputies.] The sheriff may appoint as many deputies as he thinks proper. The appointment must be in writing and signed and sealed by the sheriff,

and filed and recorded in the office of the clerk of the county. (*Form of appointment, see Appendix.*) Deputies as well as under sheriffs, before they enter on the duties of their office must take the constitutional oath, this does not apply however to special deputies who may be appointed to do a particular act only.

No deputy can transfer his general powers, *Hunt v. Bawell*, 5 *Johns.* 137, and while the sheriff is in the execution of his office, the deputy has as much power as the under sheriff. 2 *Johns.* 73.

Sheriff to summon constables to attend supreme court.] When any term of the court of appeals or the supreme court is held in his county, the sheriff is required before the commencement of such term to summon two constables to attend the same. 2 *R. S.* 363, 4th ed.

Other courts.] The sheriff within a reasonable time before the sitting of any circuit court, court of oyer and terminer, county court, or court of sessions, must summon personally, as many marshals or constables of his county as he may be directed to summon by the presiding judge of any such court, to such courts.

To act as crier.] When attending court where the services of a crier are needed, the sheriff or his deputy, or some constable to be designated; must perform the duties of crier. He is allowed no compensation for such services. *Laws of 1847, chap.* 470. 2 *R. S.* 476, 4th ed.

Duty on receiving precept from district attorney.] The sheriff on receiving the precept for summoning the jury, required to be issued to him by the district

attorney of his county, must immediately cause proclamation thereof to be published once in each week until the setting of the court, in one or more of the newspapers printed in his county, the expense of which is a county charge.

To have custody of the jails.] The sheriff in each county is required to have charge and the general supervision of the jails and prisons in his county. He may appoint keepers of such jails and prisons; but he is responsible for their acts. 1 R. S. 697, 4th ed. For the duty of such keepers and the regulations respecting such jails and prisons, see 2 R. S. 940, 4th ed.

Persons imprisoned in civil cases.] The sheriff is not permitted to charge a person arrested on a civil process, or receive from any such person any sum of money, or for anything provided for him, or the prisoner, at any place of entertainment, nor is he permitted to receive any gratuity for keeping such prisoner out of jail, or for waiting for such prisoner to find bail, or for waiting for any other purpose. Nor is he permitted to receive from such prisoner any valuable thing for the chamber rent of any prison. 1 R. S. 428, 1st ed. 2 R. S. 671, 4th ed. For the duty of the sheriff more at length relating to persons arrested and imprisoned on civil process, see 2 R. S. 672, 4th ed.

Where to keep his office.] He must keep his office for the transaction of business, in the city or village where the county courts are held. He must file in the county clerk's office a notice stating what place he has designated for his office.

Office hours.] His office must be kept open for

business every day in the year except Sundays and the fourth day of July, from nine to twelve A. M., and from two to five P. M., except in the county of New-York and the county of Kings, where office hours must be from nine to four. In the county of Kings, he may close his office on the fourth of July, and Thanksgiving and Christmas days. *Laws of 1851, chap. 113.*

Papers served on him.] It is deemed a personal service on him to leave papers for him at his office during business hours, but if a person belonging to the office should be there, the papers should be handed to him. 2 R. S. 473. If the sheriff omits to file the notice where his office will be kept, papers may be served on him by leaving them at the office of the county clerk, with the clerk or his deputy. *Id.*

Duty respecting executions.] One of the most responsible duties of the sheriff relates to the collection of executions. The first step on receiving an execution, is to endorse on the same the year, month, day and hour when received: He should then enter in a register,

1st. The title of the cause.

2d. The name of the attorney issuing the execution.

3d. The amount directed to be collected.

4th. The year, month, day and hour when the execution was received.

5th. A brief memorandum of any special instructions he may have received from the attorney by whom it was issued.

The above rules apply also to under sheriffs and

deputies. In case of several executions against the same defendant, the one first delivered will have the preference. *Peck v. Tiffany*, 2 Cowen. 451. The goods of the defendant will be bound by the execution, only from the time of its delivery to the officer. 2 R. S. 613, 4th ed. *Camp v. Chamberlain*, 5 Denio, 198.

May levy upon coin, bank bills, &c.] He may levy upon any current gold or silver coin belonging to the defendant, and return the same as so much money collected without exposing it to sale. He may levy on any bills or other evidences of debt issued by any moneyed corporation, or by the United States government, which is circulated as money, belonging to the defendant. *Id.*

May levy on goods pledged.] He may levy on goods pledged for the payment of money or the performance of a contract, and sell the interest of the person making the pledge, and the purchaser will acquire all the interest of the defendant on performing the condition of the pledge. *Bakewell v. Ellsworth*, 6 Hill, 484. *Steif v. Hart*, 1 Comstock, 20.

May levy on other goods and chattels.] The sheriff may levy and sell any other goods and chattels of the defendants not exempt by law. For the list of goods exempt, see Chapter XI on Constables

Levy, what constitutes.] To constitute as against strangers a valid levy, the officer, by virtue of the execution, must take possession of the property by manual acts, or he must declare that a levy is intended which must be acquiesced in by those who are present and interested in the question. In the case of *Camp v. Chamberlain*, 5 Denio, 203, Ch. J.

Beardsley remarks, "A levy cannot rest in a mere undivulged intention to seize property; something more is required; there must be possessory acts to indicate a levy, or it must be asserted by word of mouth, so that what is done by the officer, if not justified by the process in his hands will make him a trespasser." See also 3 *Wend.* 446, 16 *Johns.* 287, and the authorities cited on this subject in Chapter XI.

Notice of sale of personal property.] Before selling any personal property the officer must give six days' notice of such sale, by fastening up written or printed notices in public places in the town where the sale is to be had, specifying the time and place of sale. From the language of the statute it would seem that such notices should remain put up for six days *successively* immediately preceding the day of sale. 2 *R. S.* 614, 4th ed. (*Form of notice, Appendix.*)

Mode of sale.] Personal property may not be exposed to sale unless present and within view of those attending such sale. It must be offered for sale in such lots and parcels as will tend to make the same sell at the highest price. 2 *R. S.* 616, 4th ed. It was held to be proper in one case where the property consisted of a great many articles which were at different places in the buildings and fields of the defendant, and where the sheriff had at first pointed out to the bidders the property to be sold, for the officer to sell the whole together on the premises. *Tift v. Barton*, 4 *Denio*, 171. But in another case, where an officer had levied on thirteen sheep, generally, and on the day of

sale the sheep of the defendant, numbering twenty-one, being present, the officer offered for sale thirteen of the sheep, without designating which, and on being asked by a bidder which sheep he sold, replied the *best*, the *fattest*, it was held that the officer had no authority to sell in such manner, and that the purchaser acquired no title, and had no authority under such a sale to select. *Warring v. Loomis*, 4 Barb. 485.

Requisites of an execution.] For the requisites of an execution in order to make it valid and fair on its face so as to protect the officer, the sheriff is referred to 2 R. S. 616, 4th ed.

Notice of sale of real estate.] When the sheriff is unable to find personal property, he must then levy on the real estate of the defendant, if he has any. Should it become necessary to sell real estate, the officer must proceed as follows: He must cause a notice of the time and place of holding any such sale to be fastened up in three public places in the town where such real estate is to be sold, and if to be sold in a town different from that in which the premises are situated, then such notices must also be posted up in the town where such premises are situated. A copy of such notice must be printed once in each week in a newspaper of such county, if there be one. If there be no newspaper printed in such county, and the premises to be sold are not occupied by any person against whom the execution is issued, or by some person holding the same as tenant or purchaser under such person, then such notice must be published in the state paper once in each week.

How to be described.] In every such notice, the real estate to be sold must be described with common certainty, by setting forth the name of the township tract and the number of the lot, if there be any, and if there be none, by some other appropriate description.

Sales by vendue, and by day light.] The sale of real estate or of any personal property by virtue of any execution, must be at public vendue, between the hours of nine o'clock in the morning and the setting of the sun.

Penalty for irregular sales.] Any officer who sells any real estate without the previous notice above mentioned, or otherwise than in the manner above mentioned, forfeits one thousand dollars to the party injured, in addition to any damages which such party may sustain.

Mode of conducting sale of real estate.] When real estate offered for sale by virtue of any execution, consists of several known lots, tracts or parcels, such lots, tracts or parcels must be separately exposed for sale; and if any person claiming to be the owner of any portion of such estate, or claiming to be entitled by law to redeem any such portion, requires such portion to be exposed for sale separately, it becomes the duty of the sheriff to expose the same for sale accordingly. No more should be exposed for sale than appears necessary to satisfy the execution. For wrongfully taking down any such notice of sale or defacing the same the penalty is fifty dollars.

Purchases by officer forbidden.] The officer conducting any sale of property on execution, must not

directly or indirectly purchase any property whatever, at any sale by virtue of such execution; and all purchases made by such officer, or to his use are void.

Certificate of sale, its contents.] Upon the sale of real estate by virtue of any execution, the officer making the same must make out and subscribe duplicate certificates of such sale containing:

1st. A particular description of the premises sold:

2d. The price bid for each distinct lot or parcel:

3d. The whole consideration money paid:

4th. The time when such sale will become absolute and the purchaser will be entitled to a conveyance, pursuant to law.

To be filed, &c.] One of such duplicate certificates, must, within ten days after such sale, be filed in the office of the clerk of the county, and the other be delivered to the purchaser. If there be two or more purchasers, a certificate must be delivered to each. 2 R. S. 370, 1st ed.; 618, 4th ed.

Executions against the person.] For the proceedings of the sheriff on process against the person, see 2 R. S. 426. 1st ed.; 670, 671 and 681, 4th ed.

To give receipt for process.] Any person delivering to the sheriff a process of any description, on paying the fee allowed by law, is entitled to receive a minute in writing, signed by the sheriff, specifying the names of the parties in such process, the general nature of the same, and the day when delivered. 2 R. S. 684, 4th ed.

To give a copy when required.] The officer serving

process is required, if the party served demands it, to furnish a copy of the process, and that without any compensation. *Id.*

Liability for not executing process.] The officer to whom process is delivered to be served, must execute the same according to the command of the same, and for any violation of duty in that respect is liable to an action at the suit of the party aggrieved. *Pardee v. Robinson*, 6 *Hill*, 550.

May return process by mail.] Sheriffs, under sheriffs and deputies may return all process in civil actions by mail, where they reside in a different place from that in which the clerk's office to which the return is to be made is located, and between which places there is a regular communication by mail. To make return valid, the paper must be enclosed in an envelope, and properly directed, and deposited in the post office nearest or most convenient to the office, and the postage prepaid thereon, by the officer making the return. *Laws of 1850, chap. 225.* 2 *R. S.* 684, 4th ed.

The duty of the sheriff in respect to persons surrendered by their bail is pointed out at page 629 2 *R. S.*, 4th ed.

May call to his aid the power of the county.] When a sheriff, or other public officer, authorized to execute process, has reason to apprehend that resistance will be made to the execution of such process, he is authorized to command every male inhabitant of his county, or as many as he may think proper, armed as he may direct, and also armed military companies in his county, if need be, to assist him in overcoming such resistance,

and arresting those who may be engaged in the violation of the law. 2 R. S. 684, 4th ed.

Neglecting duty or conniving at escapes.] Sheriffs, coroners, marshals, or constables, who wilfully neglect to execute criminal process, or connive in any manner at the escape of persons charged with crime, or take any gratuity with the view of aiding the escape of such persons, whether the escape be *attempted* or *effected* or not, forfeit one thousand dollars, and are liable to imprisonment one year in a county jail, and upon conviction for such offence, are deemed forever disqualified to hold any office of trust or honor or profit in this State. 2 R. S. 868, 4th ed.

Reports by sheriffs to secretary of state.] Within ten days after the adjournment of any criminal court of record, the sheriff of the county in which such court is held, must report by mail to the secretary of state, the name, occupation, age, sex, and native country of every person convicted at such court of any offence, the degree of instruction which each person so convicted has received, and all such other items of information in relation to such convicts and their offences as the secretary of state may require; which reports are to be made in such form as the secretary of state may prescribe: and to enable sheriffs to make the returns, they are authorized by themselves and their deputies to make all necessary inquiries of the persons convicted, before or after trial, and of the keepers of jails, penitentiaries, or other places where such convicts may be confined, and of all other persons. For their services in the premises,

they will be allowed a reasonable sum by the board of supervisors of their respective counties as a county charge; and for any neglect by any sheriff to comply with the law in this respect, he will forfeit the sum of fifty dollars to the use of the people. *Laws of 1849, chap. 259.* Similar reports are required of the sheriffs of the counties of Albany, Columbia, Schenectady, Rensselaer, Oneida, Kings, and Erie, respecting persons convicted at courts of special sessions, and mayors' courts, in the several cities in those counties. *Laws of 1849, chap. 259.*

Drawing and summoning jurors.] The duty of the sheriff respecting the drawing of jurors, is pointed out at Chapter XVII, on County Clerks. The jury being drawn, the sheriff is required to summon the persons named in the list, to attend court. The jury must be summoned at least six days before the sitting of the court by giving personal notice to each person, or by leaving a written notice at his place of residence with some person of proper age. The sheriff must return the list to the court at the opening thereof, specifying those who were summoned, and the manner in which each person was notified. 2 R. S. 662, 4th ed.

Jury before execution in case of insanity.] Should a convict under sentence of death become insane, the sheriff of the county with the concurrence of a justice of the supreme court, or in his absence, of the county judge, may summon a jury of twelve electors to inquire into such insanity. He must give immediate notice to the district attorney of the county. Should such jury of inquisition find

the convict insane, the sheriff must suspend execution of the warrant directing the death of the convict, until he receives a warrant from the governor, or from the justices of the supreme court, directing him to proceed with the execution. *Laws of 1847, chap. 328. 2 R. S. 844, 4th ed.*

Female convict.] In case of a pregnant female convict under sentence of death, the sheriff is required in the manner above mentioned, to summon a jury of six physicians to inquire into the alleged pregnancy. If the jury find her pregnant, they so certify in their inquisition. The sheriff will then suspend execution until directed to proceed by the governor. *Id.*

Sheriff's fees and compensation.] The sheriff is entitled to receive,

For serving summons or any other process by which a suit should be commenced in a court of law, citation or declaration, when there has been no process previous thereto, \$0 50

Traveling in making such services, for going only, to be computed in all cases from the court house of the county, or if two or more court houses, then from that nearest to the place where the service is made, except in Oneida, where the travel is computed from Whitestown, for each mile,

06

For taking a bond of the plaintiff in an action for the delivering of personal property, or taking a bond on the arrest of a defendant, or taking a bond in any other case where he is authorized to

take the same for which no other fee is prescribed by statute,	37 $\frac{1}{2}$
For a certified copy of such bond,	25
For a note of every process delivered to defendant on request,	06
For returning any process,	12 $\frac{1}{2}$
Serving an attachment for the payment of money, or an execution for that purpose, or a warrant issued by the comptroller or county treasurer for collecting the sum of two hundred and fifty dollars, or less, for each dollar,	2 $\frac{1}{2}$
On all sums above two hundred and fifty dollars, for each dollar,	1 $\frac{1}{4}$
Advertising goods, lands or tenements, for sale on execution,	2 00
If execution be stayed or settled after advertising and before sale,	1 00
He may also charge and collect the lawful fees which he pays to parties for advertising real estate.	
Drawing a certificate of the sale of real estate, for each folio,	25
For two copies, for each folio,	12 $\frac{1}{2}$
For drawing and executing a deed for real estate pursuant to sale, to be paid by the grantee,	1 00
Serving a writ of possession or of restitution, putting any person entitled into the possession of premises, and removing the tenant,	1 25
Travel for such purpose, for each mile, . . .	6
For taking a bond for the liberties of the jail,	37 $\frac{1}{2}$

Summoning a jury to attend court in causes noticed for trial and on the calendar, for each cause,.....	50
Summoning a jury on writ of inquiry or in any case where it is necessary to try the title to personal property, and attending the jury, making and returning the inquiry,.....	1 50
For summoning a foreign or special jury and returning the panel,.....	1 12½
For summoning a jury in a special proceeding,.....	1 00
For attending such jury,.....	50
For bringing up a prisoner upon a <i>habeas corpus</i> to testify or answer in any court, or for any other purpose,.....	1 50
Travelling from the jail for such purpose, for each mile,.....	12½
Attending court or before an officer with such prisoner, besides expenses for each day,.....	1 00
Attending a view, for each day,.....	1 87½
For the time going and returning for each day,-	1 25
For serving an attachment against the property of a debtor, under the provisions of law relating to absconding, concealed, fraudulent, and non-resident debtors,...	35
The officer granting the attachment will certify to him an additional amount for his trouble and expense in the matter.	
Making and returning an inventory of such appraisal, for the amount paid to	

each appraiser for each day, not exceeding,	1 00
Drafting the inventory, for each folio,	25
Making the necessary copies, for each folio,	12½
Giving notice of a general or special election to the inspectors of election in the towns and wards, for each town,	1 00
His claim for publishing such notices will be audited by the board of supervisors as a part of the contingent charges against the county.	
For rendering service that may be performed by a constable, he is entitled to the same rate of compensation.	
For receiving every person committed to prison in civil cases,	25
For discharging every such person,	25
Summoning constables to attend court, for each constable summoned,	50
Attending the supreme court, for each day,	2 00
He is entitled to no per diem for attending either the circuit, oyer and terminer, county court, or sessions. <i>Ex. parte Miner, 2 Hill, 411.</i>	
For mileage on execution in civil actions, to be computed from the court house, for going only, for each mile,	06
For receiving an execution in a civil action and entering the same in his book, searching for property, and paying the postage on the return of said execution, in all,	50
<i>Laws of 1850, chap. 225. 2 R. S. 833 to 835.</i>	
<i>Fees in criminal cases and compensation for other du-</i>	

ties.] The sheriff is entitled to receive for every person committed to prison in his county, ·\$0 37½

For every person discharged from such prison, ······ 37½

For summoning a grand jury for a court of oyer and terminer or sessions, ······ 10 00

And for performing any duty in any criminal proceedings that may be performed by constables, the same rate of compensation that is allowed to constables.

For conveying a single convict to the State prison or house of refuge from the county prison, from which such convict should be conveyed, for each mile, ······ 35

For conveying two convicts as above mentioned, for each mile, ······ 45

For conveying three convicts as first above mentioned, ······ 50

.. For conveying four convicts as first above mentioned, ······ 55

For conveying five convicts, ······ 60

And for all additional convicts, such reasonable allowance as the comptroller may think just.

For the maintenance of each convict while on the way, for each day's maintenance, · 1 00

The expenses for maintenance may not exceed, however, one dollar for every thirty miles travel.

Laws of 1849, chap. 123. 2 R. S. 938, 4th ed.

When the sheriff is required by any statutory provision to render any service in behalf of the people, and for their benefit, which is not made chargeable by law to his county, or to some officer or

other person, his account for such service must be audited by the comptroller and paid out of the treasury. 1 R. S. 697, 4th ed.

Sheriffs may now sell lands and give conveyances in their respective counties, in the same manner and with the like effect as was formerly done by masters in chancery. He is entitled to receive his disbursements and printer's fees, and the same per centage as is allowed on executions, but in no case to exceed the sum of ten dollars. *Laws of 1847, page 344.*

CHAPTER XXI.

OF TAXES ON THE LANDS OF NON-RESIDENTS.

If the assessor would in all cases perform his duty in regard to the lands of non-residents, as is required by the statute, a very great amount of trouble and expense would be saved, not only to the owner of the land, but to the large class of public officers through whose hands the several proceedings relating to such lands are required to pass. The duty of the officer in making the assessment is so simple that it is surprising that it should be overlooked. All that seems to be necessary is that the land should be described with that certainty required in giving a description in a deed, so that the tract assessed may be identified, that is to say, if the tract assessed is well known as a whole tract embraced in some well known patent, or a subdivision of some well known tract or patent, then it may be so put down, but if the land

is not known to the assessors as belonging to any patent or subdivision of a patent or tract, then it should be described by boundaries, and for the purpose of making such description intelligible and conformable to law, the assessors, may as has been seen, take steps to have the supervisors of the town cause the same to be surveyed.

The inconvenience first experienced by a neglect of this simple requirement of the statute, is felt by the county treasurer. When the collector comes in with his list of unpaid taxes against the lands of non-residents, it becomes the duty of the county treasurer after having compared the same with the original assessment roll and found them to agree, to credit the collector with the amount returned. *Laws of 1855, page 782.* The county treasurer then sends such accounts with the collector's affidavit, (the treasurer having no authority to correct the description of the lot if he knows it to be imperfect) to the comptroller. If the comptroller finds the lots or parcels returned so imperfectly described that it would be impossible to give a valid deed should a sale of the land become necessary, he has no other course to pursue but to reject the account which he has received from the county treasurer. Here the trouble begins. A transcript of this account comes back to the county treasurer, and is the account denominated "rejected taxes," with which the committee on rejected taxes have to do, referred to at pages 75 and 87. The county treasurer having received the transcript of rejected taxes, presents the same to the supervisor of the town where the

tax was assessed, and the supervisor is required to present the same to the board of supervisors. The supervisor of the town affected by the return of such rejected taxes, is required by law to see that there is added to the next assessment roll of his town, a correct description of the lands mentioned in the rejected list. Should he omit so to do, the board causes the tax to be assessed on his town, *Laws of 1855, page 785*, and hence of necessity compels the town to pay the taxes of non-residents, and this, for the reason that the duty imposed upon the assessors and supervisor above mentioned, so plain and simple, is omitted to be performed.

The several officers whose duties are connected with assessing, levying and collecting taxes, are pointed out at length, in the act of 1855, which is inserted next preceding the forms in the Appendix.

CHAPTER XXII.

OF THE BOARD OF COUNTY CANVASSERS.

How constituted.] The inspectors of election in each election district, deliver the original statements of votes given at a general or special election to the supervisor of their town or ward, and if there be no supervisor, or if he be disabled from attending to such statements, they must be delivered to one of the assessors of the town or ward in which the election was held. The persons to whom such statements are lawfully delivered constitute the board of county canvassers.

Where and when to meet.] They meet at the office

of the clerk of the county, on the Tuesday next following the election, before one o'clock in the afternoon of that day, in all the counties of this State except the county of Hamilton, which meet on the first Friday next following said election. They choose one of their number as chairman.

Secretary.] The clerk of the county, or in his absence his deputy, must be secretary of the board.

Oath.] The chairman administers the constitutional oath to each member of the board, and the same oath is then administered to him by the secretary.

Quorum.] The major part of the supervisors or assessors to whom the original statements of the canvass in the several districts in their towns or wards have been delivered, are deemed a sufficient number to constitute a board.

Estimate of votes to be made.] The original statements of the canvass in each district are then produced, and from them the board proceed to estimate the votes of the county, and make such statements thereof as the nature of the election requires; such statements are then delivered to and deposited with the county clerk.

Separate statements to be made.] They must make a separate statement containing the whole number of votes given in such county for the office of governor, lieutenant governor, judge of the court of appeals, justice of the supreme court, clerk of the court of appeals, secretary of state, comptroller, treasurer, attorney-general, state engineer and surveyor, canal commissioner, inspector of state prisons, senator in each district, and representa-

tive in congress in each district, or any or either of them ; the names of the persons for whom such votes were given, and the number of votes given for each ; another, of the votes given for all county officers, any or either of them ; another, of the votes given for member of assembly, in each assembly district ; and another, of the votes for electors of president and vice president ; and another, of the votes given for any proposed amendment to the constitution. *Laws of 1847, chap. 240.*

Number of votes and names written at length.] In such statements, the whole number of votes given in each town and district, the names of the candidates, and the number of votes given to each, must be written out in words at full length.

How certified.] Each statement must be certified as correct, and attested by the signatures of the chairman and secretary of the board ; and a copy of each, thus certified and attested, must be delivered to the county clerk, to be recorded in his office.

Members of assembly and county officers.] Upon the statement of votes given for members of assembly and county officers, the board must proceed to determine what person or persons have, by the greatest number of votes, been duly elected to each of the offices mentioned in each statement.

Copy to be published.] The board must cause a copy of every such determination, and of the statement upon which it is made, to be published in one or more of the newspapers printed in the county.

If an inspector cannot attend at board.] If any one of the supervisors or assessors appointed to attend the county canvass, is unable to attend the meeting of the board on the day appointed for such meeting, he is required, on or before that day, to cause to be delivered at the office of the county clerk, the original statement of the votes of his town or ward.

Duty of those who attend.] If on that day a majority of the county canvassers do not attend, or the statements of the votes from every district in the county are not produced, the canvassers then present, will adjourn to some convenient hour of the next day. At that hour they again meet, and the canvassers then attending, although less than a majority of the whole, organize themselves as a board, and upon the statements, or certified copies thereof, then produced, proceed to estimate, state and certify the votes of the county, in the manner before directed.

Statements containing omissions, &c., may be returned to be corrected.] If upon proceeding to canvass the votes, it clearly appears to the canvassers that in any statement produced to them, certain matters are omitted in such statement, which should have been inserted, or that any mistakes which are clerical merely, exist, they must cause the statement to be sent by one of their number, (whom they shall depute for that purpose,) to the town or ward inspectors, and town or ward canvassers of the town or ward from whom they were received, to have the same corrected; and the canvasser so deputed must immediately proceed and give no-

tice to the town or ward inspectors and canvassers, whose duty it will be forthwith to assemble together and make such correction as the facts of the case require; but such town or ward inspectors and canvassers may not at such meeting change or alter any decision before made by them but only cause their canvass to be correctly stated; and the board of county canvassers are authorized to adjourn from day to day, for the purpose of obtaining and receiving such statement, such adjournment not to extend beyond three days.

Clerk to deliver statements.] The county clerk will deliver to the board, all the certified statements of the votes taken in each town or ward at the next preceding election that may have been received at his office.

To procure those not received by him,] If on the day appointed for the meeting of the board, it does not organize, owing to a deficient return of the votes of the county; the county clerk is required by a special messenger, or otherwise, to obtain necessary statements or certified copies thereof, in time to be produced to the board at their next meeting.

To record statements.] The county clerk will record in his office all the statements and certificates, that shall have been delivered to him by the board of county canvassers, and keep a proper book for that purpose.

To prepare three copies.] Of the statement and certificate of the votes for the office of governor, lieutenant governor, judges of the court of appeals, justices of the supreme court, clerk for the court of appeals, secretary of state, comptroller,

treasurer of the state, attorney-general, state engineer and surveyor, canal commissioners, inspectors of state prisons, senators and representatives in Congress, or either of them, he must prepare three certified copies under his signature, and sealed with his seal of office.

To transmit the same to governor, secretary and comptroller.] Within five days after the adjournment of the board of county canvassers, the county clerk must deposit in the nearest post office, directed to the governor, to the secretary of state and to the comptroller, each, one of the certified copies of the statement and certificates of votes, so prepared by him.

To deliver copy of certificate to county officers.] He must prepare as many certified copies of each certificate of the determination of the board of county canvassers, as there are persons declared to be elected in such certificate, and without delay, deliver one of such copies to each person so elected.

List to be sent to secretary of state.] He is required to transmit to the secretary of state, within twenty days after a general election, and within ten days after a special election, a list of the names of the persons elected in the county as members of Assembly, and also a list of the names of all persons elected to any county office at such election, with the places of their residence respectively.

Ballots containing the surname only of the candidates, should not be estimated by the canvassers in determining the result. *The People v. Stephens*, 5 Hill, 617. It was held by Justice Mason in the case of the *People v. Cook*, 14 Barb. 309,

that the duty of county canvassers partakes of a two fold character, some of their duties being judicial and some ministerial. In determining whether certain ballots are intended for a given candidate or not, he held that their act was judicial, but in certifying a return of the canvass, their act would be regarded as ministerial. But in a recent case in Indiana, it was held that the duties of the board of canvassers in canvassing and making out a statement of the votes was ministerial. *Brower v. O'Brien*, 2 *Carter Rep.* 423. The doctrine was held, in a recent case in Michigan, that the duties of the canvassers were *wholly* ministerial. *The People v. Vanclive*, 1 *Mann*, 362. All the late cases seem to agree in this, that the certificate of the canvassers is only *prima facie* evidence, and that the party may go behind the certificate to the ballots, and behind any informality of the ballot even. In other words, that it is the will of the electors that entitles the party to the office instead of the certificate of the canvassers. *The State v. Giles*, 1 *Chand. (Wis.)* 112. 1 *Mann*, (*Mich.*) 362. 4 *Cow.* 297. 8 *Id.* 102. 20 *Wend.* 14. 5 *Denio*, 409. 14 *Barb.* 259. 4 *Selden*, 67.

The judicial power of this board extends no farther than to take notice of matters of general notoriety, for instance, that certain abbreviations are used for particular names. They cannot hear evidence to determine the intention of the voters. 4 *Selden*, 67.

CHAPTER XXIII.

OF BOARDS OF EXCISE.

The law of 1855, entitled "An act for the prevention of intemperance, pauperism, and crime," *Laws of 1855, page 340*, while it takes away from boards of excise the right to grant licenses to sell intoxicating liquors, does not abolish, it is believed, the board, nor does it take away the right to pass upon the question whether persons proposing to keep houses of entertainment for travellers have the necessary accommodations to entitle them to the privileges of an innkeeper.

In 1843 an act was passed authorizing the granting of licenses to keep taverns without including the right to sell intoxicating drinks. *Laws of 1843, page 79. 1 R. S. 86, 4th ed.* No fee can be charged for granting such a license.

Who compose board of excise.] The commissioners of excise in each town consist of the supervisor and the justices of the peace of the town. The supervisor and any two justices form a board. If the office of supervisor be vacant, then any three justices of the town may form a board, and if there are not two justices in town, then any two from any adjoining town may be associated with the supervisor.

When licenses should be granted.] The board have a large discretion in refusing or granting licenses. *Ex parte, Parsons, 6 Hill.* They should be satisfied that the person applying has the necessary accommodations to entertain travellers. *1 R. S. 86, 4th ed.*

A person keeping up a sign, without a license,

indicating that he keeps a tavern, forfeits one dollar and twenty-five cents for every day such sign is kept up. *Id.*

A license to keep a tavern under the act of 1843, cannot be granted unless the applicant executes a bond, substantially in the following form : “ Know all men by these presents, that we and are held and firmly bound unto the people of the State of New-York, in the sum of one hundred and twenty five dollars, to be paid to the said people ; for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these present. Sealed with our seals. Dated the day of 18 .

Whereas the above bounden has applied to the board of commissioners of excise of , in the county of , for a licence to keep an inn or tavern: Now, therefore, the condition of this obligation is such that if the said , during the time he shall keep an inn or tavern, shall not suffer it to be disorderly, or suffer any cock-fighting, gaming, or playing with cards or dice, or keep any billiard table or other gaming table, within the tavern so by him kept, or in any out-house, yard or garden belonging thereto; then this obligation to be void, otherwise in force.

Sealed and delivered }
in presence of . }

We approve of , as surety in above bond.

A. B., *Supervisor.*

C. D., }
E. F., } *Justices.*

The bond being executed, the board may grant a license, but it must express on its face that it restricts the party from selling intoxicating liquors.

Bond when filed.] Such bond must be filed in the town clerk's office within five days after its execution.

Record.] The board must keep a book in which they must record their proceedings. The minutes of their proceedings may be kept substantially as follows:

“At a meeting of the commissioners of excise for the town of _____, in the county of _____ on _____, the _____ day of _____, 1855.

Present :—J. D., *Supervisor.*

O. P., } *Justices of*
L. M., } *the Peace.*

Resolved, That a license to keep a tavern pursuant to section 1, of chapter 97, of the laws of 1843, be granted to A. B.”

The members of the board need not be sworn, as the constitutional oath taken when entering on the duties of their respective offices is deemed sufficient.

CHAP. 427.

AN ACT *in relation to the collection of taxes on lands of non-residents, and to provide for the sale of such lands for unpaid taxes.*

Passed April 13, 1855, three-fifths being present.

The People of the State of New-York, represented in Senate and Assembly, do enact as follows :

TITLE I.

OF THE PAYMENTS AND RETURNS TO BE MADE BY THE COUNTY TREASURERS, AND THE DUTY OF THE COMPTROLLER AND OTHER OFFICERS THEREUPON.

County debts.] § 1. The treasurer of each county shall pay to the creditors of his county, from the moneys paid to him by the collectors, such sums, and in such manner as the board of supervisors shall have directed.

State tax, when to be paid.] § 2. The several county treasurers shall, on or before the first day of March in each year, pay to the treasurer of this State, the amount of the state tax, if any, raised and paid over to them respectively, retaining the compensation to which they may be entitled.

How paid.] § 3. Such payment may also be made by depositing such money, to the credit of the treasurer of this state, in such banks in the cities of New-York or Albany as shall have been designated by the comptroller, and shall then be entitled to receive the state deposits, and in case of such payment to either of those banks, the county treasurer making it, shall forthwith transmit a certificate of deposit to the comptroller, who shall

thereupon certify such payment to the state treasurer, and charge him with the amount thereof.

Certificates of unpaid taxes.] § 4. Whenever any county treasurer shall receive from a collector an account of unpaid taxes assessed on lands of non-residents, such county treasurer shall compare the same with the original assessment roll, which original rolls the collectors are required in all cases to return and deposit with their respective county treasurers; and if he finds it to be a true transcript thereof, he shall add to it a certificate showing that he has examined and compared the account with the assessment roll, and found the same to be correct; and after crediting the collector with the amount, shall, before the first day of April next ensuing, transmit the account and collector's affidavit, to the comptroller, with a certificate that he has compared the account with the entries of the same taxes, in the original assessment roll, and has found the same to be a true transcript of such roll.

Tax on land vacant by removal of occupant.] § 5. If the taxes on any farm or lot of land, assessed to a resident, shall be returned as unpaid, in consequence of such premises becoming vacant by the removal of the occupant, before the collection of the tax imposed thereon, or in default of goods and chattels of the occupant to satisfy such tax, the supervisor of the town in which such land was assessed, shall add a description thereof to the assessment roll of the next year in the part thereof appropriated to taxes on lands of non-residents, and shall charge the same with the uncollected

tax of the preceding year; and the same proceedings shall be had thereon, in all respects, as if it was the land of a non-resident, and as if such tax had been laid in the year in which the description is so added.

Non-resident lands.] § 6. Whenever the taxes upon the lands of a resident shall be returned for non-payment, as provided in the last preceding section, to the county treasurer, the collector shall annex to such return an affidavit, stating the reasons why such tax was not collected. Nothing in said last preceding section shall be so construed as to conflict with sections one, two and three of chapter four hundred and sixty-one, laws of eighteen hundred and thirty-six, but they shall be concurrent remedies.

Tax may be paid to treasurer.] § 7. Any person whose lands are assessed, may pay the tax assessed thereon to the treasurer of the county in which such lands were assessed, provided such payment be made to the county treasurer before he shall have made his annual return of the arrears of taxes to the comptroller. The county treasurer shall give a receipt for such payment, and shall also make return thereof to the comptroller.

Apportionment of state tax.] § 8. The comptroller shall, from the annual returns made to him of the valuations of real and personal estates in the several counties in this State, charge the several county treasurers with the amount of the state taxes, if any, to be raised in their respective counties, crediting them with their own fees; but no fees shall be allowed by the comptroller to the

county treasurers, in adjusting the accounts of the county treasurers, for such portion of the state tax as is paid by credit given for taxes on non-resident property returned to him.

Lands imperfectly described.] § 9. Whenever any account of arrears of taxes on the lands of non-residents shall be transmitted by a county treasurer to the comptroller, he shall examine them, and reject all taxes that shall be found to be charged on lands imperfectly described, and credit such county treasurer, in a book to be kept by the comptroller for that purpose, with the amount of all arrears of taxes which shall be admitted by him.

Arrears, how paid.] § 10. If the arrears so credited to any county shall exceed the state tax, if any, in said county, the comptroller shall cause the surplus, after deducting therefrom any balance which may be due from such county on account of taxes previously rejected by the comptroller, to be paid out of the treasury of this State, to the treasurer of the county; and the whole amount of taxes so to be assumed by the State, shall be collected for its benefit, in the manner hereinafter provided. If there be no state tax, the whole amount of such arrears, after deducting such balance as above mentioned, shall be paid to the county treasurer:

Accounts with county treasurer.] § 11. The comptroller shall state the accounts of the several county treasurers, on the first day of May in every year; and whenever any part of a state tax shall appear to be unpaid by any county treasurer, the comptroller shall transmit by mail to such county trea-

surer a copy of his account, requiring him to pay the balance within thirty days.

Suits for neglect to pay.] § 12. If any county treasurer shall refuse or neglect to pay such balance within such time, the comptroller shall forthwith, (unless he shall be satisfied by due proof that such treasurer has not received such balance, and has taken all proper steps to collect the same,) deliver a copy of such county treasurer's account to the attorney general, who shall prosecute forthwith; and the State shall be entitled to recover the balance due, with interest thereon, from the first day of May, in the year when the same ought to have been paid.

Bond to be sued.] § 13. The comptroller may also, in his discretion, direct the board of supervisors of the proper county, to institute one or more suits on the bond of such treasurer and his sureties.

Suits when to be discontinued.] § 14. If the defendants in any suits to be brought under either of the last two preceding sections, shall at any time before judgment is obtained therein, pay the balance due the State, with interest, into the treasury, or account for the same to the comptroller, it shall be his duty, on payment of costs of suit, to direct such suits to be discontinued.

Statement of arrears.] § 15. It shall be the duty of the comptroller, on or before the first Tuesday in October, in every year, to furnish the boards of supervisors of the several counties, from which returns of arrears of taxes shall have been received at his office, with statements of the sums paid out of the State treasury, to their respective county

treasurers, on account of such arrears during the year preceding.

Rejected taxes, statement of.] § 16. The comptroller shall, on or before the first day of September in each year, transmit by mail or otherwise, to each county treasurer, a transcript of the taxes of the preceding year, assessed in any town of such county, which shall have been rejected by him, for any cause whatever, stating therein the cause of such rejection.

Taxes on lands imperfectly described.] § 17. Whenever the comptroller, after having transmitted such annual transcript, shall discover that any taxes credited to a county in the books of his office have been assessed on lands so imperfectly described, that the same cannot in his opinion, be located with certainty, he shall charge such taxes to the treasurer of the county in which such lands shall be, with the interest thereon, from the first day of March, in the year following that in which the taxes were laid, to the first day of February next after the discovery of such imperfect description.

Transcript to be delivered to supervisors.] § 18. The comptroller shall also transmit, by mail, a transcript of the returns of such taxes, with the addition of such interest, to the proper county treasurer, who shall deliver the same to the supervisor of the town upon which such taxes are to be assessed, by whom it shall be delivered to the board of supervisors, at their next meeting. If the town upon which such taxes were originally assessed, shall have been divided since such assessment, the

county treasurer shall deliver such transcript to the board of supervisors at their next meeting.

Description of land to be made.] § 19. Whenever the comptroller shall have rejected any tax, in the first instance, or have charged the same to a county, to which it shall have been credited, on account of any inaccurate or imperfect description of the lands on which such tax was laid, the supervisor of the town in which such lands are situate, shall, if in his power, add to the next assessment roll of such town an accurate description of such lands; and if necessary, may cause the survey of such lands at the expense of the town; and the board of supervisors shall charge them with the taxes and interest in arrears, stating the tax of each year separately, and shall direct the collection thereof; and such taxes and interest shall, for all the purposes of this act, be considered as the taxes of the year in which the descriptions shall be perfected.

If not made, tax assessed upon town.] § 20. If an accurate description of such lands shall not have been added by such supervisor to the assessment roll of his town, the board of supervisors shall cause such arrears of taxes, and the interest thereon, to be levied on the valuations of the estates, real and personal, of such town, as appearing by such assessment roll, and shall direct the same to be collected with the other taxes of the same year.

How assessed in case of division of town.] § 21. If the town in which such taxes were originally assessed, shall have been divided since such assessment, then such taxes and interest shall be apportioned by the board of supervisors among the towns

included in the limits of such original towns, in such equitable manner as they may deem proper.

Tax when cancelled.] § 22. Whenever it shall be made to appear to the comptroller that any tax returned as unpaid was previously to such return paid to the collector or county treasurer, the comptroller shall cancel such tax on the books of his office; and if the same shall have been also paid into the state treasury, he shall cause it to be repaid out of the treasury, to the person by whom such payment shall have been made.

Account to be transmitted to supervisors.] § 23. Whenever any tax shall be so cancelled by the comptroller, he shall transmit an account thereof to the treasurer of the proper county, who shall cause the same to be laid before the board of supervisors thereof, and the amount of such tax with the interest shall be collected by them of the collector or county treasurer, who made such erroneous returns, and be paid into the treasury of this State.

Overpaid taxes.] § 24. Whenever it shall appear satisfactorily to the comptroller that the amount of any tax has been paid, and afterwards other money has been paid into the treasury of this state, on account of such tax; and in cases where it shall appear that the amount due for any tax has been overpaid, he may draw his warrant on the treasurer for the amount so overpaid, in favor of the person who may have made such payment.

Losses by default.] § 25. All losses which may be sustained by the default of the collector of any town or ward, shall be chargeable on such town or ward. All losses which may be sustained by

the default of the treasurer of any county in the discharge of the duties imposed by this act, shall be chargeable to such county. And the several boards of supervisors shall add such losses to the next year's taxes of such town or county.

Interest on unpaid taxes.] § 26. If any tax charged on lands of non-residents, or lands returned as under section five of this act, shall remain unpaid until the first day of August following the year in which they shall have been assessed, they shall thereafter be subject to a yearly interest, at the rate of ten per cent., until the same shall be duly paid or the lands sold, as hereinafter provided.

Certificate of taxes due.] § 27. The comptroller shall from time to time, give to any person requiring the same, a certificate of the amount of any tax, interest and charges, due on any tract, piece or parcel of land; and the state treasurer may receive such tax, interest and charges, and give a receipt therefor upon such certificate, which shall be countersigned by the comptroller, and entered in the books of his office.

Persons may pay tax for their interest in lands.] § 28. Whenever a sum in gross is assessed upon any tract, piece or lot of land, any person claiming a divided or undivided part thereof, may pay to the treasurer of the State any part of the tax, interest, and charges due thereon, proportionate to the number of acres claimed by him, on the certificate of the comptroller; and the remaining tax, interest and charges shall be a lien on the residue of the land only.

Map of sub-divisions.] § 29. If the tract be subdi-

vided, the person wishing to pay the tax upon a divided part of it, shall deliver to the comptroller a map of the subdivisions if required by him.

Taxes how paid.] § 30. Any person may pay the tax for any one year, and the interest and charges thereon, on any tract or lot of land, without paying the tax of any other year; and in case any tract or lot of land shall have been returned as containing a greater quantity of land than it shall actually contain, the amount overcharged shall be deducted, or if the tax shall have been paid according to such return, shall be refunded out of the treasury, on satisfactory proof being produced to the comptroller of the quantity actually contained in such tract or lot, at any time before the sale of such lands; but no such overcharge shall be cancelled, nor shall such overpayments be refunded unless application shall be made to the comptroller therefor within six years after the assessment of such overcharge.

Overcharges to be re-charged to county.] § 31. If the whole amount of the tax, in case of such overcharge, shall have been paid to the county treasurer, out of the treasury of this State, the comptroller shall charge the amount so refunded, with interest and charges thereon, to the treasurer of the county from which the tax was returned, and shall transmit an account thereof to him.

Town to be liable therefor.] § 32. Such county treasurer shall deliver such account to the board of supervisors, at their then next meeting, who shall cause the amount thereof to be added to the pro-

portion of the charges of the county to be raised in the town in which the tax was laid.

TITLE II.

OF SALES FOR UNPAID TAXES, AND THE CONVEYANCE AND REDEMPTION OF LAND SOLD, ETC.

Land when to be sold.] § 33. Whenever any tax charged on lands returned to the comptroller, and the interest thereon, shall remain unpaid for two years from the first day of May following the year in which the same was assessed, the comptroller shall proceed to advertise and sell such land in the manner hereinafter provided.

List of lands, and notices of sale.] § 34. He shall make out a list or statement of the lands charged with such tax and interest, and so liable to be sold; and shall cause so many copies thereof to be printed, as shall be sufficient to furnish each county treasurer with at least five copies, and each town clerk with at least two copies, and shall transmit to each county treasurer such number of said copies as shall be equal to five copies for such county treasurer, and two copies for each town clerk in his county. And the comptroller shall also make and transmit to the county treasurer of each county, a list or statement of all the lands in such county charged with such tax and interest, who, in addition to publication in the state paper, shall cause the same to be correctly published and printed in each of the papers in his county designated by the board of supervisors for publishing the session laws, for the space of ten weeks prior to the commencement of such sale. If no news-

paper shall have been designated to print the laws in any county, such list or statement shall be published in two newspapers of such county to be selected by the county treasurer; and if there shall not be two newspapers published in such county, then in two papers which the county treasurer shall ascertain to be most generally circulated in such county. But no error in the printed description in such newspapers shall vitiate or in any manner affect the validity of such sale; and all expenses of printing such list or statement shall be audited by the comptroller and paid out of the treasury of this State, on receiving one copy of the newspaper containing the same, with an affidavit of the publication of such list or statement according to the provisions of this section, to be made by the printer, publisher, or some person to whom the fact of such publication shall be known.

Lists how transmitted.] § 35. The comptroller may employ agents or messengers to transmit to such of the county treasurers as he may think proper, the copies of such lists of lands liable to be sold for taxes; and the agents or messengers so employed shall require of each county treasurer to whom they shall deliver such copies, an acknowledgment, in writing, of the receipt thereof; which acknowledgments shall be delivered by such agents or messengers to the comptroller, at least eighteen weeks before the commencement of the sale of the lands mentioned in such lists.

Pay of agents.] § 36. The reasonable compensation of such agents or messengers shall be fixed by the comptroller, and paid out of the treasury; but

the same shall not, in any case, exceed the amount of postage which would have been charged on the copies transmitted by such agents or messengers, if they had been transmitted by mail.

Expenses how paid.] § 37. The expenses incurred by the State in printing and transmitting any list of lands liable to be sold for taxes, and in publishing notices of sale, shall be charged on the lands mentioned in said list, and shall be apportioned among the several tracts or parcels of such land, in such proportions as the comptroller shall deem just.

Copies in treasurer's office.] § 38. The county treasurers shall retain in their office five of the copies transmitted to them, and shall permit all persons, at all reasonable hours, to examine the same; and shall cause the remaining copies to be delivered to the town clerks.

Treasurer's expenses.] § 39. The expenses which may be incurred by the county treasurer, in the transmission of such lists, shall be audited and paid as contingent expenses of the county.

Notice by town clerk.] § 40. Every town clerk to whom such copies shall be delivered, shall give notice at the opening of every town meeting for the election of town officers, that lists of all lands advertised for sale for taxes by the comptroller, are deposited in his office, and that they may be there seen and examined, at all reasonable hours, free of expense.

General notice.] § 41. After transmitting such lists to the county treasurers, the comptroller shall cause to be published, once in each week, for

twelve weeks successively, in all the newspapers in this State, designated by the board of supervisors of the several counties for printing the laws, under the provisions of the act entitled "An act for the publication of the session laws in two newspapers in each county in this State," passed May fourteenth, one thousand eight hundred and forty-five, a general notice, stating that a list of all the lands liable to be sold for taxes has been forwarded to each of the county treasurers and town clerks in this state, and that so much of the said lands as may be necessary to discharge the taxes, interest, and charges which may be due thereon at the time of sale, will, on a day to be mentioned in such notice, and the succeeding days, be sold at public auction at the capitol in the city of Albany.

Affidavit of publication.] § 42. Every printer to whom such notice shall be transmitted for publication, shall, within twenty days after the last publication thereof, transmit to the comptroller an affidavit of due publication, made by some person to whom the fact of publication shall be known.

Maps of lands sold.] § 43. Whenever the comptroller, preparatory to a sale of lands for taxes, shall deem it necessary, in order to test the correctness of the descriptions thereof, he may apply to the board of supervisors of any county, for maps of any tracts of land charged with taxes, and returned from such county. And the board of supervisors to whom such application shall be made, shall furnish such maps, at the expense of the county, if they can be procured, and if not, they

shall then furnish such descriptions of the land as they can obtain, with a statement of the quantity in each subdivision, if the same be divided.

Sale.] § 44. On the day mentioned in the notices, the comptroller shall commence the sale of such lands, and shall continue the same from day to day, until so much of each parcel so assessed, shall be sold, as will be sufficient to pay the taxes, interest and charges thereon.

Bids how paid.] § 45. The purchasers at such sale shall pay the amount of their respective bids to the state treasurer, within forty-eight hours after the last day of the sale; and if any such purchaser shall refuse or neglect to pay the same within that time, the comptroller may state an account against him, and deliver it to the attorney general, who shall be entitled to recover the same from the purchaser, by an action in the name of the people of this state; and for that purpose he shall forthwith cause a suit to be instituted therefor; or the comptroller may, in his discretion, re-sell the said lands upon which such bids so remaining unpaid were made, as hereinafter provided.

Certificate of purchase.] § 46. After such payment shall have been made, the comptroller shall give to the purchaser of any such lands, a certificate in writing, describing the lands purchased, the sum paid, and the time when the purchaser will be entitled to a deed.

Cancellation of sales. § 47. At any time after the expiration of three months from the conclusion of any sale of lands for taxes, pursuant to this act, when any purchaser at such sale shall not have

paid the amount of his bid, or the same shall not have been collected from him, it shall be lawful for the comptroller to cancel such sale, by which all the rights of the said purchaser under such bid shall be extinguished.

New certificate.] § 48. When the comptroller shall have cancelled any sale in the manner above provided, he may issue a certificate of such sale to any other person who will pay the amount for such certificate which would be payable by the original purchaser, in case the said sale had not been cancelled, or if such certificate cannot be sold, he may transfer the same to the people of the State.

Change of purchaser.] § 49. The change of purchaser shall be noted in the sales book, and the time when made; and the certificate issued to such new purchaser, shall confer the same right to him and his legal representatives, as he would have acquired had he been the successful bidder at the sale.

Time for redemption.] § 50. The owner or occupant of any land sold for taxes, or any other person, may redeem the same, as hereinafter provided, at any time within two years after the last day of such sale, by paying to the state treasurer, on the certificate of the comptroller, for the use of the purchaser, his heirs or assigns, the sum mentioned in his certificate, with interest at the rate of ten per cent per annum, from the date of such certificate.

Undivided parts.] § 51. Any person claiming an undivided part of any tract, lot or piece of land sold

for taxes, may redeem the same on paying as aforesaid, such proportion of the purchase money and interest as he shall claim of the lands sold.

Undivided share of undivided part.] § 52. Any person claiming an undivided share in any tract or lot of land out of which an undivided part shall have been sold for taxes, may redeem his undivided share by paying as aforesaid, such proportion of the purchase money and interest as he shall claim of the lands sold.

Specific parts.] § 53. Any person claiming a specific part of any tract, lot or piece of land sold for taxes, may redeem his specific part by paying as aforesaid, such proportion of the purchase money and interest as his quantity of acres shall bear to the whole quantity of acres sold.

Specific part of undivided tract.] § 54. Any person claiming a specific part of any tract or lot of land out of which an undivided part shall have been sold for taxes, charged on the whole tract or lot, may redeem his specific part by paying as aforesaid, such proportion of the purchase money and interest as his quantity of acres shall bear to the whole quantity taxed.

Proportional parts, how paid.] § 55. Any person claiming a specific part of any tract or lot of land out of which a specific part belonging to some other person, shall have been sold for taxes charged on the whole tract or lot, may exonerate himself from all liability to contribute to the owner of the part sold, by paying as aforesaid, at any time before the expiration of the time allowed for the redemption, such proportion of the purchase money

and interest as his quantity of acres shall bear to the whole quantity taxed; and such payment shall operate as redemption of a proportionate part, according to the amount paid, of the land sold.

Partial redemptions.] § 56. In every case of a partial redemption, pursuant to either of the last five sections, the quantity sold shall be reduced in proportion to the amount paid on such partial redemption; and the comptroller shall convey accordingly.

Taxes on land conjointly sold.] § 57. Whenever the lands of any one person shall be sold for taxes assessed conjointly on the lands of such person and the lands of another person, and such other person shall not pay his due proportion under section fifty-two of this act, the person whose lands shall be sold may redeem the same on paying, as aforesaid, the purchase money and interest; and he shall be entitled to recover from such other person whose lands were assessed with his, a just proportion of the redemption moneys so paid, with lawful interest from the time of such redemption; but no suit shall be brought for the recovery of such proportion, until after the expiration of the time allowed for redemption.

Suits for proportion of value.] § 58. If such owner shall not redeem the land sold, and the same shall be conveyed by the comptroller, such owner may recover from such other person the same proportion of the value of the land sold and conveyed, that he ought to have paid of the tax, interest and charges for which the land shall have been sold. In all actions under this or the last preceding sec-

tion, the certificate of the state treasurer, countersigned by the comptroller, duly stating the facts in relation to such redemption or sale and conveyance, shall be presumptive evidence of such payment, and of all facts therein stated.

Lien of judgment.] § 59. Every judgment obtained under either of the last two sections, shall have priority, as against the lands of the defendants therein, on which the tax was assessed, and for which such proportional part ought to have been paid, to all mortgages executed, and all judgments recovered since the twenty-third day of April, eighteen hundred and twenty-three.

Docket, how made.] § 60. But such judgment shall not be entitled to such priority, unless at the time of docketing the same the plaintiff cause an entry to be made by the clerk in the docket thereof, specifying that such judgment has priority, as a lien on certain lands, over mortgages and other judgments pursuant to the laws regulating the collection of taxes, which entry shall be a part of such docket.

Notice of unredeemed lands.] § 61. The comptroller shall, at least six months before the expiration of the two years allowed for redemption, prepare a notice for each county, in which there shall then appear to be any lands sold for taxes and unredeemed, specifying particularly every parcel remaining unredeemed, and the amount necessary to redeem the same, calculated to the last day on which such redemption can be made, and stating that unless such lands are redeemed by a certain day, they will be conveyed to the purchaser; and

he shall cause such notice to be published once in each week, for at least six weeks successively, in the newspapers designated by the boards of supervisors of such counties respectively to publish the session laws; such publication to be in the body of the newspaper, and not in a supplement; and the said six weeks publication to be completed at least eighteen weeks before the expiration of the two years allowed for the redemption. The boards of supervisors of the respective counties shall audit and pay the expenses of such publication.

How published.] § 62. If no newspapers shall have been designated to print the laws in any county in which such lands are situated, such notices, and lists or statements, shall be transmitted and published as above provided, in two newspapers of such county, to be selected by the comptroller; and if there shall not be two newspapers published in such county, then in the two newspapers which the comptroller shall believe to be most generally circulated in such county.

Deeds.] § 63. If no person shall redeem such lands within such two years, the comptroller shall, at the expiration thereof, execute to the purchaser, his heirs or assigns, in the name of the people of this State, a conveyance of the real estate so sold, which shall vest in the grantee an absolute estate in fee simple; subject, however, to all the claims which the people of this State may have thereon for taxes, or other liens or incumbrances.

Lost certificate.] Whenever any certificate, given by the comptroller for lands sold for taxes, shall be lost, or wrongfully withheld by any person from

the owner thereof, the comptroller may receive evidence of such loss or wrongful detention, and on satisfactory proof of the fact, may execute and deliver a deed to such person, as may appear to him to be the rightful owner of the land described in the certificate.

Conveyances, how executed.] § 65. Such conveyance shall be executed by the comptroller, under his hand and seal, and the execution thereof shall be witnessed by the deputy comptroller, surveyor general or treasurer, and all conveyances hereafter executed by the comptroller, of lands sold by him for taxes, shall be presumptive evidence that the sale, and all proceedings prior thereto, from and including the assessment of the land, and all notices required by law to be given previous to the expiration of the two years allowed to redeem, were regular, according to the provisions of this act, and all laws directing or requiring the same, or in any manner relating thereto.

Bids for State.] § 66. It shall be the duty of the comptroller to bid in for the State, at any sale of land for taxes, every lot of land by him put up for which no person shall offer to bid; and certificates of such sale shall be made by the comptroller, which shall describe the lands purchased, and specify the time when the people of this State will be entitled to a deed. Such purchases shall be subject to the same right of redemption as purchases by individuals; and if the lands sold shall not be redeemed, the comptroller shall execute a release therefor, to the people of this State, or their assignees, which shall have the same effect, and

become absolute in the same time, and on the performance of the like conditions, as in the case of sales and conveyances to individuals.

Sale of lands bid in by comptroller.] § 67. At any time before the expiration of the two years allowed to redeem, the comptroller may sell and assign all the interest of the people of this State, in any or all such certificates as mentioned in the last preceding section, either at public or private sale, as to him may seem most for the interest of the people to any person who shall forthwith pay into the state treasury the amount of the purchase money charged him by the comptroller; and the assignee of such certificate, if the lands therein described shall not be redeemed, shall be entitled to a deed therefor, which shall have the same effect, and become absolute in the same time, and on the performance of the like conditions, as in the case of conveyances under the last preceding section.

Notice to occupants.] § 68. Whenever any lot or separate tract of land sold for taxes by the comptroller, and conveyed as hereinbefore provided, shall, at the time of the expiration of the two years given for the redemption thereof, or any part thereof, be in the actual occupancy of any person, the grantee to whom the same shall have been conveyed, or the person claiming under him, shall serve a written notice on the person occupying such land, within two years from the expiration of said time to redeem; stating in substance, the sale and conveyance, the person to whom made, and the amount of the consideration money mentioned in the conveyance, with the addition of

thirty-seven and a half per cent on such amount, and further addition of the sum paid for the deed; and stating also, that unless such consideration money and the said thirty-seven and a half per cent, together with the sum paid for the deed, shall be paid into the treasury for the benefit of such grantee, within six months after the time of filing in the comptroller's office of the evidence of the service of the said notice, that the said conveyance will become absolute, and the occupant and all others interested in the land, be forever barred from all right or title thereto. And no conveyance made in pursuance of this section shall be recorded, until the expiration of such notice, and the evidence of the service of such notice shall be recorded with such conveyance.

Notice how served.] § 69. Such notice may be served personally, or by leaving the same at the dwelling house of the occupant, with any person of suitable age and discretion, belonging to his family.

Redemption.] § 70. The occupant, or any other person, may, at any time within the six months mentioned in such notice, redeem the said land, by paying into the treasury, such consideration money, with the addition of thirty-seven and a half per cent thereon, and the amount that shall have been paid for the deed; and every such redemption shall be as effectual as if made before the expiration of the two years allowed to redeem the land sold.

Certificates.] § 71. Upon such redemption as provided for in the last preceding section, the comp-

troller shall give to the person redeeming, a certificate under his hand and seal, stating the payment, the year in which the sale was made, and showing particularly what land such payment is intended to redeem; and such certificate shall be evidence of such redemption, and may be recorded by the clerk of the county in the book for the recording of deeds.

Affidavit of service of notice.] § 72. In every case of actual occupancy, the grantee, or the person claiming under him, in order to complete his title to the land conveyed, shall within one month after the service of such notice, file with the comptroller a copy of the notice served, together with the affidavit of some person who shall be certified as credible, by the officer before whom such affidavit shall be taken, that such notice as is above required, was duly served, specifying the mode of service.

Comptroller's certificate of facts.] § 73. If the comptroller shall be satisfied by such copy and affidavit that the proper notice has been duly served, and if the moneys required to be paid for the redemption of such land shall not have been paid, as hereinbefore provided, he shall under his hand and seal, certify such facts, and the conveyance before made shall thereupon become absolute; and the occupant, and all others interested in said lands shall be forever barred of all right and title thereto.

Occupant may redeem.] § 74. The occupant of any such lot, or any other person may at any time before the service of said notice by the purchaser, or

the person claiming under him, redeem any lands so occupied, by filing in the office of the comptroller satisfactory evidence of the occupancy required, and by paying to him the consideration money for which the lands to be redeemed were sold, and thirty-seven and a half per cent thereon together with the sum paid for the deed if any.

Treasurer's receipt.] § 75. Upon any redemption being made, as permitted in the last preceding section, the receipt of the treasurer to whom the payment is made accompanied by the comptroller's certificate, as required by section sixty-eight of this act, and further stating, that such redemption was made without notice, shall be presumptive evidence that such land has been correctly redeemed.

Mortgage liens not affected.] § 75. No sale of real estate hereafter made for the non-payment of any tax or assessment, shall destroy, or in any manner affect the lien of any mortgage thereon, duly recorded or registered at the time of such sale, except as hereinafter provided.

Notice to mortgagee.] § 77. It shall be the duty of the purchaser at such sale, to give to the mortgagee a written notice of such sale, requiring him to pay the amount of the purchase money, with interest, at the rate allowed by law thereon, within six months after the giving of such notice.

Mortgagee's lien.] § 78. If such payment shall be made, the sale shall be of no further effect, and the mortgagee shall have a lien on the premises for the amount paid, with the interest which may thereafter accrue thereon, at the rate of seven per

cent per annum, in like manner as if the same had been included in his mortgage.

Failure to pay.] § 79. In case the mortgagee shall fail to make such payment within the time so limited, he shall not be entitled to the benefit of section seventy-six of this act.

Mortgagees defined.] § 80. The term "mortgagee," as used in this act, shall be construed to include assignees whose assignment shall be duly recorded, and personal representatives; and the term "purchaser," shall be construed to include assignees, and real or personal representatives, as the case may be.

Notices, how served.] § 81. The notice required by section seventy-seven of this act, may be given either personally or in the manner required by law, in respect to notices of non-acceptance or non-payment of notes or bills of exchange, and a notarial certificate thereof shall be presumptive evidence of the fact; such certificates may be recorded in the county in which the mortgage was recorded, in the same manner and with the same effect as is by law prescribed in respect to deeds or other evidences of title of real estate.

Notices, to whom directed.] § 82. The notice required to be given under the last preceding five sections, in cases of sales by the comptroller, shall be directed only to such persons as shall within two years from the time of such sale file in the office of the comptroller, a notice stating the name of the mortgagor and mortgagee, the date of the mortgage, and the amount claimed to be due thereon, and the county, town and tract in which the

mortgaged premises are situated, with the number of the lot on which said mortgage is claimed to be a lien, with the name of the person or persons claiming notice, their residence, and the post-office to which such notice shall be addressed; in case such mortgagee or other person shall omit or neglect to file such notice with the comptroller within the said two years, then said mortgagee or other person shall be barred from all claim to redemption by virtue of said mortgage, and the title of the purchaser shall become valid and effectual the same as if such mortgage had not existed.

Invalid sale.] § 83. Whenever the comptroller shall discover, prior to the conveyance of any lands sold for taxes, that the sale was for any cause whatever invalid or ineffectual to give title to the lands sold, the lands so improperly sold shall not be conveyed, but the comptroller shall cancel the sale, and forthwith cause the purchase money and interest thereon to be refunded out of the state treasury to the purchaser, his representatives or assigns.

Error, how charged.] § 84. If the error originated with the county or town officers, the sum so paid shall be a charge against the county from which the tax was returned; and the board of supervisors shall cause the same to be assessed, levied, collected, and paid to the treasurer of this State.

Cancelling sale and refunding money.] § 85. If the discovery that the sale was invalid shall not be made until after the conveyance shall have been executed for the lands sold, it shall be the duty of the comptroller, on receiving evidence thereof, to cancel the sale, to refund out of the state treasury

to the purchaser, his representatives or assigns, the purchase money, and interest thereon, and to recharge the county from which the tax was returned, with the amount of purchase money, and interest at the rate of seven per cent from the time of the sale, and such county shall cause the same to be levied and paid, as provided in the last preceding section.

Expenses of sales.] § 86. The expenses attending the sales for taxes out of this act, including a due proportion of the expenses of publishing lists and notices and transmitting copies thereof, and not hereinbefore provided for, shall be a charge on the lands out of which the sales are made; and an equal part of such expense shall be added to the taxes, interest, and other charges, on each parcel of land out of which a sale may be made.

Moneys to be paid into treasury.] § 87. The moneys received upon every such sale for taxes and interest, and also for the expenses of sale, shall be paid into the state treasury, and the accounts of persons entitled to any portion of the moneys so received, for such expenses, shall be audited by the comptroller, and paid out of the state treasury.

Neglect of duty.] § 88. If any of the officers concerned in the execution of this act, shall wilfully neglect or refuse to perform the duties assigned them, such officer shall be deemed guilty of a misdemeanor, and, on conviction, shall be punished by fine or imprisonment, or both, in the discretion of the court.

Pay of county treasurers.] § 89. The county treasurers of the several counties of this state, shall

not, after the thirty-first day of May next, receive any moneys in payment of the taxes of eighteen hundred and fifty-two and eighteen hundred and fifty-three, but they shall forthwith transmit to the state treasurer all money received by them in payment of such taxes, and the interest thereon up to that time, and shall at the same time furnish the comptroller with a full account of the same, exhibiting the lots, tracts, pieces, or parcels of land, particularly describing each as described in the books of his office, upon which such taxes were paid; the amount paid upon each, and the year for which such tax was paid; and if any part of such money shall have been paid on parts of lots or tracts, upon certificates made by the comptroller, the description of such part shall be the same as contained in such certificate.

Payments how audited.] § 90. The comptroller shall, upon the receipt of such account, cause all payments therein to be duly credited to the several tracts, pieces or lots of lands so paid, on the books in his office, as specified by section thirty-nine of chapter two hundred and ninety-eight, of the laws of one thousand eight hundred and fifty; and the comptroller shall, on and after the first day of June next, be invested with all the powers and duties relating to the collection of said taxes of one thousand eight hundred and fifty-two and one thousand eight hundred and fifty-three, and the sale of lands for non-payment of the same, as are conferred by this act in relation to unpaid taxes hereafter to be returned to, and admitted to the comptroller.

Exceptions.] § 91. The provisions of this act (except sections two, three, eight, twelve, thirteen and fourteen,) shall not in any manner affect or apply to the city and county of New-York, the city of Albany, the city of Brooklyn, in the county of Kings, or the village of Williamsburgh, in said county of Kings; and in said sections the words "county treasurer" shall be construed to include the chamberlain of the city and county of New-York.

Repeal.] § 92. The act entitled "An act in relation to the collection of taxes on lands of non-residents, and to provide for the sale of such lands in the counties where they are assessed," passed April ten, one thousand eight hundred and fifty, and the act entitled "An act in relation to the publication of notices previous to the conveyances of lands sold for taxes," passed April six, one thousand eight hundred and fifty, and all laws inconsistent with this act, are repealed: but the repeal or anything contained, except section thirty, in relation to the cancellation of overcharged taxes, and sections eighty-nine and ninety, in relation to the taxes of the years one thousand eight hundred and fifty-two and one thousand eight hundred and fifty-three, shall not in any manner affect any tax levied or assessed in either of the years one thousand eight hundred and forty-nine, one thousand eight hundred and fifty and one thousand eight hundred and fifty-one, nor any proceeding for the collection thereof, by sale of the land taxed or otherwise; nor the rights of any person which have accrued or may accrue by

reason of any such sale or proceeding, nor the powers of county treasurers in relation to the collection of the taxes of eighteen hundred and fifty-two and eighteen hundred and fifty-three, except as provided by sections eighty-nine and ninety, of this act above mentioned; and all taxes heretofore levied or assessed, which have been or shall be hereafter rejected by the comptroller, and shall be hereafter returned to him, after having been duly relaid or reassessed, with corrected descriptions, shall, for the purpose of this act, be deemed to have been levied and assessed in, and to be the taxes of the year in which the taxes were so relaid and the description perfected.

APPENDIX OF FORMS.

[No. 1.]

Constitutional oath.

I do solemnly swear (or affirm, *as the case may be*,) that I will support the constitution of the United States, and the constitution of the State of New-York, and that I will faithfully discharge the duties of the office of _____ according to the best of my ability.

Subscribed and sworn before me, }
 this day of _____, 18 . }
 S. C.

A. H. S.

[No. 2.]

Form for keeping supervisor's book.

J. K., supervisor of the town of _____, in account with said town.

DR.				CR.			
June 19, 1855.	To amount received from S. J., collector of the town, ..	\$159	75	May 10, 1855.	By amount paid W. E., commissioner of highways,	\$100	00
July 20, 1855.	To amount of fine collected of X. Y., for (<i>state what it is for</i> ;)	20	00	Oct. 15, 1855.	By amount paid to H. S., on judgment against the town,	76	53
	&c. &c.				&c. &c.		

[No. 3.]

Certificate of the town clerk and justices of the peace on examination of the supervisor's accounts, to be entered in his book.

Town of County, } ss.

We, the subscribers, the justices of the peace and town clerk of the town of , hereby certify that we have examined the foregoing account of C. D., supervisor of said town; and that we find the same correct in all respects, and that there appears to be a balance due at this date of dollars and cents to the said supervisor, from the said town of , (or, as the case may be.)¹

Dated , the day of , 18 .

D. E.,
W. H.,
S. Y.,
J. K.,
H. D., } *Justices of the Peace.*
 Town Clerk.

[No. 4.]

Supervisor's certificate, to accompany copies of entries in town clerk's book.

Town of County, } ss.

I hereby certify that the within are the copies of entries relative to moneys voted to be raised in the town of , which were delivered to me by the town clerk of said town.

Dated , the day of , 18 .

C. D., *Supervisor.*

[No. 5.]¹

Report of a supervisor of a town where all the poor are not a county charge.

The supervisor of the town of , in the county of , respectfully reports to the clerk of the board of supervisors, as follows:

The number of paupers supported, or relieved, in the town of , during the year ending the day of , 18 , as appears from the accounts of the overseers of the poor, was .

The whole expense of such support was.....\$

Of this sum, there was paid for transportation of paupers...

Allowance made to overseers for their services,.....

do to justices,.....

do to keepers and officers,.....

do to physicians for services and medicine, . . .

The actual value of the labor of the paupers maintained, was.

Estimated amount saved in the expense of their support, in

consequence of their labor, was.....

(Insert any other charges there may be.)

Of the whole number of paupers relieved by the overseers, there were foreigners ; lunatics ; idiots ;

and mutes. The number of paupers under their charge at the time of auditing their accounts, was ; of which

were males, and , females. The vested poor money of said town amounts to dollars. The sum raised

by tax upon the town, for the support of the poor for the year pre-
ceding this report, was dollars.

I certify that the foregoing is a correct abstract of the accounts of the overseers of the poor of the town of _____, for the year ending the _____ day of _____, 18____, as they were settled by the town auditors.

Dated _____, the _____ day of _____, 18 ____.

C. D., *Supervisor.*

[No. 6.]

Notice to town superintendent of common schools to give additional security.

Mr. J. W., Town Superintendent of Common Schools of the town of _____ ;

You are hereby notified, that in my opinion, the security which you have given is not sufficient to protect the public against the loss of the school money, with which you may be intrusted; and you are required to furnish additional satisfactory security within five days after the reception of this notice, or your office will become vacant.

Dated _____, the _____ day of _____, 18 ____.

Yours, &c.,

R. S.,

Supervisor of the town of ..

I do hereby certify that the preceding is a correct list of the grand jurors selected by me, from the qualified inhabitants of the town of

A. B., *Supervisor.*

[No. 9,]

Notice of an election.

Town of County, } ss.

We, the undersigned, composing the board of town officers of said town, do hereby give notice, that the ensuing general election, at which the following officers are to be elected, viz: (*insert the list of officers contained in the notice of the secretary of state*) will be held on the day of next, in election district number one, at the house of W. X., in said district; on the same day in election district number two, at the house of H. S., in said district; and in election district number three, on the same day, at the house of P. Q., in said district; and that the poll of the election will be opened on the day of aforesaid, at (*insert the time fixed upon by the board, not later than 9 A. M.,*) and closed at sunset on that day.

Dated , the day of , 18 .

A. B., *Supervisor.*

S. C., *Town Clerk.*

R. F., }
T. W., } *Assessors.*
M. N., }

[No. 10.]

Division of a new town into election districts.

We, the undersigned, composing the board of town officers of the town of , hereby certify that we have this day divided said town into election districts, which are bounded and described as follows, viz: (*describe each of the districts.*)

Dated , the day of . 18 .

A. B., *Supervisor.*

S. C., *Town Clerk.*

R. F., }
T. W., } *Assessors.*
M. N., }

[No. 11.]

Supervisor's notice calling meeting to fill vacancy in the office of inspector of elections.

To S. C., Town Clerk, (or Justice of the Peace,) of the town of _____ :

You are hereby notified to attend a meeting of the supervisor, town clerk, and justices of the peace, of the town of _____, appointed by me to be held at _____, on the _____ day of _____ next, for the purpose of filling a vacancy in the office of inspector of elections, in election district number _____, in said town.

Dated _____, the _____ day of _____, 18 ____.

Yours, &c.,

A. B., Supervisor.

[No. 12.]

Appointment of an inspector of elections.

Town of _____, }
County, } ss.

This is to certify that H. G. is appointed inspector of elections, in and for election district number _____, in said town of _____, to fill the vacancy occasioned by the death of C. S. (or from any other cause as the case may be.)

In witness whereof we have hereunto subscribed our names, this _____ day of _____, 18 ____.

A. B., Supervisor.

S. C., Town Clerk.

R. F., }
T. W., } Assessors.
M. N., }

[No. 13.]

Alteration of an election district.

We, the undersigned, composing the board of town officers of the town of _____, hereby certify that we have this day altered the election districts in said town; and that the districts as now constituted are bounded as follows :

Election district number one is bounded (insert a clear and precise description of the boundaries.)

Election district number two is bounded, &c., (*give the boundaries.*)

Election district number three, comprises the remaining territory in said town not included in either of the above described districts, and is bounded, (*describe the boundaries,*)

Dated , the day of , 18 .

A. B., *Supervisor.*

S. C., *Town Clerk.*

R. F., }
T. W., } *Assessors.*
M. N., }

[No. 14.]

Collector's warrant.

STATE OF NEW-YORK, }
County, } ss. .

The people of the State of New-York, to , Collector of the town of , in said county, greeting: You are hereby commanded to receive and collect from the several persons named in the assessment roll hereunto annexed and herewith delivered to you, the several sums mentioned in the last columns thereof opposite to their respective names: Also to collect the sum of fifty cents, as commutation tax, from every person appearing by said assessment roll liable to pay the same, and when the name of any person between the ages of eighteen and twenty-one years shall appear in said roll liable to pay said commutation tax, you are hereby further directed to collect the said sum of fifty cents of the father, master, or guardian with whom such person shall reside, or out of any property such minor may have in the town. And on all sums of taxes received or collected within thirty days after giving the notices required by the twenty-ninth section of the act of May 10, 1845, chap. 180, you are directed to receive and collect in addition to the taxes named in said assessment roll, one cent on every dollar of tax, and one cent on every sum less than one dollar of tax, for your fees for collecting the same. And on all sums of taxes remaining unpaid after the expiration of thirty days from the posting of the notices specified in said act, you are directed to receive and collect in addition to the said tax so remaining unpaid, five cents on every dollar for your fees for collecting the

same. And you are hereby directed out of the moneys so collected, to pay on or before the day of next

\$ 1. To the commissioners of highways of said town, the sum of dollars and cents, levied and assessed on said town for the support of highways and bridges.

\$ 2. To the commissioners of highways of said town, the sum of dollars and cents, for and on account of non-resident highway labor, levied and assessed on said town.

\$ 3. To the overseers of the poor of said town, the sum of dollars and cents, for moneys levied and assessed on said town for the support of the town poor.

\$ 4. To the supervisor of said town the sum of dollars and cents, for town charges assessed on said town.

\$ 5. To the treasurer of said county, the sum of dollars and cents, for and on account of non-resident school taxes assessed on said town.

\$ 6. To the treasurer of said county, the sum of dollars and cents, for and on account of a state tax levied on said town.

\$ 7. To the treasurer of said county, the sum of dollars and cents, for the support of the town poor at the poor house establishment of said county.

\$ 8. To the treasurer of said county, the sum of dollars and cents, for and on account of the military tax levied on said roll.

\$ 9. To the treasurer of said county, the sum of dollars and cents, being the remainder of the moneys so to be collected.

You will proceed as directed by the 29th and 30th sections of the act, entitled "An act to reduce the number of the town officers and town and county expenses, and to prevent abuses in auditing town and county accounts," passed May 10, 1845.

And in case any person named in said assessment roll shall neglect or refuse to pay his taxes or the fees for collecting the same, (after giving the notices and waiting the time specified in said act) you are hereby authorised to levy and collect the said taxes and fees as aforesaid, by distress and sale of the goods and chattels of such person, together with the costs and charges of such distress and sale; and for so doing this shall be your sufficient warrant.

Given under the hands and seals of the undersigned, the board of
 supervisors of county, at , the day of
 in the year of our Lord one thousand eight hundred and fifty- .

[L. S.]

[L. S.]

[L. S.]

[L. S.]

[L. S.]

[L. S.]

[L. S.]

[L. S.]

[L. S.]

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[L. S.]

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[L. S.]

[L. S.]

[No. 16.]

*Abstract of town accounts presented and allowed by the board of town auditors of the town of
county of*

No. of the account.	Names of claimants.	Nature of services rendered.	Amount claimed.	Amount allowed.

NOTE.—The clerk of the Board would do well to address a letter to some member of the Board of Town Auditors substantially as follows:

Esq.,

Supervisor of the town of

SIR—Enclosed you will find a blank certificate of the board of town auditors, for your town, which you will cause to be filled up by the town clerk, under the appropriate headings, as the Revised Statutes require, and signed by a majority of said board of auditors. You will be careful to see that the name of each person having an account is *correctly spelled and plainly written*, as the same is required by law to be published. Alao to ascertain that the columns "Amount claimed," and "Amount allowed," are *correctly footed*, when presented to the board of supervisors.

G. A. D.

Clerk of the Board of Supervisors of

county.

, 18 .

, this

day of

Dated at the Supervisors' Office, in

[No. 17.]

Form of statement to be made by clerk of board of supervisors, relating to the services of the board.

A statement showing the amount of compensation audited by the board of supervisors of county, to the members thereof, within the year past, the items and nature of such compensation, as audited, the number of days the board have been in session, the distance travelled by the members, respectively, in attending the county canvass and meetings of the board within the year past. Published pursuant to the 14th section of the act passed Dec. 14th, 1847.

Names of supervisors.	Towns and wards.	Number of days attending meetings of the board and the county canvass.	Amount allowed for attendance at \$2.00 per day.	Number miles necessarily travelled in discharge of official duties.	Amount allowed for travel fee at 8 cents per mile.	Amount allowed for making copy assessment roll and fee list for collectors.	Total amount claimed.	Total amount allowed.

A. B., *Chairman of Committee.*

That the board of supervisors were in session during the present year days, and that the distance necessarily travelled by the members thereof, respectively, in attending the meetings of the board, and in the discharge of their official duties, is as above stated.

That no accounts were audited or allowed by the said board without being verified according to law for any member of such board of supervisors, or any other person.

G. A. D., *Clerk.*

A. B., *Chairman.*

[No. 18.]

Equalization table.

[illegible]

[No. 19.]
Statistical table.

TOWNS.	Totals, ...
Acres of land.	
Aggregate amount of personal estate.	
Aggregate amount of real and personal estate by assessors.	
Aggregate amount of real and personal estate by supervisors.	
State tax.	
Each town's share of county charges.	
Aggregate of town charges for town purposes.	
Rejected taxes levied on towns generally.	
Estimated amount to be levied on towns generally.	
Rejected taxes and surveys of wild lands reassessed on same lands.	
Non-resident road tax.	
Non-resident taxes for school districts.	
Deficiencies and excess in tax. Cr. for excess, and Dr. for deficiencies.	
Actual footings of taxes as read tax, and school tax.	
Cents and mills on the dollar.	

[No. 20.]
General abstract or statistical table.

NAMES OF TOWNS.	Number of acres of land in each town.	Assessors' valuation of real estate.	Equalized valuation of real estate.	Amount of personal property.	Aggregate equalized valuation.	Amount of state tax.	Proportion of county tax.	Amount of town taxes.	Rate of tax upon one hundred dollars of assessors' valuation.	NAMES OF COLLECTORS.	Amount to be paid to the overseers of the poor.	Amount to be paid to the commissioners of highways.	Amount to be paid to the supervisors.	Amount to be paid to the county treasurer for support of the town poor at the poor house.	Rejected taxes assumed.	Surplus levy of 18	Deficit levy of 18	Assumed non-resident school tax	Amount to be paid to the commissioners of highways for non-resident highway labor	Amount to be paid to county treasurer for non-resident school taxes re-assessed.	Rejected taxes re-assessed.	Amount to be paid to county treasurer for county levy and rejections re-assessed and assumed.	Aggregate state, county, and town appropriations.	Amount in the hands of county treasurer for military fund, credited to each town

Names of Incorporated Companies.	Capital stock.	Real estate.	Amount taxed.	Tax.

[No. 21.]

Report to comptroller concerning commissioners of loans.

The board of supervisors of the county of _____, hereby certify and report to the comptroller, pursuant to the requirements of Sec. 51, of the act authorising a loan of certain monies, chap. 150 of the laws of 1837.

That the commissioners for loaning certain moneys of the United States for this county, in obedience to the requirements of the 50th section of said act, have submitted to said board all the mortgages and other securities taken by them or their predecessors in office, for monies loaned, together with their books of accounts, minutes and vouchers.

That the said board as required by said act have carefully examined all such mortgages and securities, accounts and minutes so exhibited to them, and find that the moneys on loan in said county are well and amply secured by the various mortgages in the hands of said commissioners, *(or if such is not the fact, state the matter as the case may be.)*

That the mortgages taken by the commissioners since the date of our last report for moneys paid in and re-loaned are _____ in number, and are executed on the mortgage book (No. _____) by the parties thereto and are numbered, and for the amounts as follows : Mortgage No. _____, James Jackson, Fulton, \$1,000, making in the aggregate the sum of _____.

That the same are amply secured, and the accounts and minutes of the commissioners in reference thereto are kept as required by such act.

That we have not given to said commissioners any instructions as to taking additional security from the borrowers for loans made, as the security taken by the said commissioners on making said loans is deemed ample and sufficient. All of which is respectfully submitted.

Given under our hands this _____ day of _____ 18 ____.

[No. 22.]

Form of certificate to be annexed to the published proceedings of the board of supervisors by their clerk.

County of _____ }
 Supervisor's office, } ss.

I hereby certify that the foregoing is a true and correct record

of all of the acts and resolutions passed, and the proceedings had by the board of supervisors of the county of _____, at their annual meeting held in the _____ of _____, in said county, in November, 18____, so far as the same are required by law to be published.

J. M.,

Clerk of the board of supervisors of _____ county.

Dated, Nov. _____, 18 ____.

[No. 23.]

Form of the report of a committee to the board of supervisors.

The committee to whom was referred the duty of auditing sheriffs' and jailors' accounts, respectfully present the following report :

(Here insert the substance of the report, and is usually accompanied by such resolutions as the committee deem proper to offer. The same form may be used by any other committee by substituting the name of the committee.)

A. B.,	} Committee.
C. D.,	
E. F.,	
G. H.,	
I. J.,	

[No. 24.]

Report of committee to the board relating to commissioners of loans.

The committee to whom was referred the books, vouchers and minutes of the commissioners of loans of the county of _____, respectfully submit the following report :

That the books of mortgagés and securities held by the said commissioners for moneys loaned, together with their books of accounts, minutes and vouchers have been duly presented, and the committee have been attended by _____ Esq., and

_____, commissioners.

The committee have duly examined the said books, vouchers, and papers and inquired into the safety and sufficiency of the securities taken for the moneys loaned. That the securities taken, are in the judgment of your committee, ample and sufficient for the loans made, and the mortgages and securities, accounts and min-

utes of the said commissioners are in suitable and proper order as required by the act authorising said loans.

The committee therefore recommend the adoption of the report and certificate to the comptroller herewith submitted.

Dated, 18 .

By order of the committee,

H. D., *Chairman.*

[Should the committee find any defect in the proceedings or securities, they will vary their report accordingly.]

[No. 25.]

Form of warrant appointing town superintendent.

To whom these presents shall come, greeting: It having been satisfactorily shown to the subscribers, three justices of the peace of the town of , in the county of , that there is a vacancy in the office of town superintendent of common schools for said town: Now, therefore, by virtue of the power vested in us by law, we hereby appoint R. H., town superintendent of common schools for said town, to hold said office until such time as a successor may be elected or appointed for said office, and this shall be the warrant of said R. H.

Given under our hands and seals at this day of , 18 .

A. B.	[L. S.]	} <i>Justices of the Peace.</i>
C. D.	[L. S.]	
E. F.	[L. S.]	

[The same form may be used for the appointment of any other town officer which they have authority to appoint, by substituting the name of the officer and title of office in the place of the words town superintendent.]

[No. 26.]

Town superintendent's bond.

Know all men by these presents: That we, G. H., A. F. and E. B., of the town of , in the county of , are held and firmly bound unto J. W., Esq., supervisor of the town of , in the penal sum of dollars, (*insert double the whole amount of school money received during the preceding year,*) to be paid to the said J. W., or his successor in office; to which payment well and truly to be made, we bind ourselves, our heirs,

executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this day of , 18 .

The condition of this obligation is such, that whereas the above bounden G. H. has been elected town superintendent of common schools for the aforesaid town of : Now, therefore, if the said G. H. shall faithfully and legally apply and disburse all school moneys which shall be received by him during his continuance in office as town superintendent, and shall faithfully discharge all the duties of said office, then this obligation to be void, otherwise, to remain in full force.

Signed, sealed and delivered
in presence of O. P.

G. H., [L. S.]
A. F., [L. S.]
E. B., [L. S.]

[No. 27.]

Assessment roll.

Assessment roll of the town of , in the county
of , (or, of the ward, in the city
of , and county of), for the year 18 .

Names of the taxable inhabitants.	Number of acres of land.	Value of real property.	Value of personal property.	Total value of real and personal property.

LANDS OF NON-RESIDENTS.

Description of tract.	No. of acres of land.	Valuation.
Lot No. of township No. , or, a parcel of land bounded as follows: (here insert the description, with all the mi- nuteness of a deed.)*		

Dated the day of , 18 .

D. C., }
O. S., } Assessors.
B. A., }

* It is for the want of this description that, a vast amount of trouble is made to the comptroller, county treasurer, and boards of supervisors; besides, a large amount of non-resident land escapes its proper share of taxation.

[No. 28.]

Notice of completion of assessment.

Notice is hereby given that the assessors of the town of _____, (or, of the _____ ward, in the city of _____,) have completed their assessment roll for the present year, and that a copy thereof is left with the undersigned D. C., at his office, (or dwelling-house; or, *as the case may be,*) in _____, where the same may be seen and examined by any of the inhabitants of said town, (or, ward,) during twenty days from the date of this notice; and that the said assessors will meet at _____, in said town, (or, ward,) on the _____ day of _____ instant, at _____ o'clock in the _____ noon, to review their assessments, on the application of any person conceiving himself aggrieved.

Dated _____, the _____ day of _____, 18 ____.

D. C.,	} Assessors.
O. S.,	
B. A.,	

[For form of certificate to attach to assessment roll, see ante, page 133.]

[No. 29.]

Collector's bond.

Know all men by these presents, that we, A. B., C. D., and H. G., of _____, in the county of _____, are held and firmly bound unto E. F., supervisor of the town aforesaid, in the penal sum of (*insert double the amount of taxes named in the collector's warrant,*) dollars to be paid to the said E. F., or to his certain attorney, or successor in office; to which payment we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this _____ day of _____, 18 ____.

The condition of this obligation is such, that whereas the said A. B., as collector of the town of _____, has this day received the assessment roll of said town, for the purpose of collecting the taxes therein named, the total amount of which being _____ dollars; now, therefore, if the said A. B. shall faithfully execute the duties of collector, then this obligation is to be void, otherwise of force.

A. B.,	[L. S.]
C. D.,	[L. S.]
H. G.,	[L. S.]

Sealed and delivered
in presence of

[No. 30.]

Collector's affidavit of non-payment of taxes by an incorporated company.

County, ss.

A. B., of the town of _____, in the county aforesaid, being duly sworn, saith, that on the _____ day _____, 18____, he demanded of the president of the _____ company, the sum of _____, it being the amount of the tax assessed upon said company; and that the president of said company did then and hath since refused to pay any part of the said tax assessed on said company—and further, that said company has no personal property from which said tax could be levied. A. B.

Subscribed and sworn before me, }
this _____ day of _____, 18____. }

[No. 31.]

Collector's summons to appraisers.

Whereas, by virtue of a collector's warrant, I have levied upon and taken (*here insert the articles distrained*) the goods and chattels of G. H.: You are therefore hereby commanded, in pursuance of the statute in such case made and provided, to repair forthwith to the premises of the said G. H., _____, there to appraise the said goods and chattels.

A. B., *Collector.*

[No. 32.]

Oath of appraisers.

You and each of you do swear that you will well, truly, and impartially appraise the goods and chattels mentioned in this inventory, (*the collector at the same time holding the inventory in his hands and showing it to the appraisers,*) according to the best of your judgment and understanding.

[No. 33.]

Inventory.

Of the several goods and chattels upon which I have levied this _____ day of _____, 18____, on the premises of D. B., situate in _____, by virtue of a collector's warrant, for the sum of (*here state the amount of the tax*) being the tax assessed on the property of the said D. B., for the year 18____.

(*Here insert a list of the articles levied upon.*)

A. B., *Collector.*

[No. 34.]

Certificate of appraisers to be endorsed on the inventory.

We, appraisers duly sworn by A. B., the collector above named, well, truly and impartially to appraise the goods and chattels mentioned in this inventory, according to the best of our judgment and understanding, do hereby certify that we have appraised and valued the same, at the sum of (*here insert the sum at which the goods are valued.*) Witness our hands, this day of , 18 .

C. D., }
E. F., } *Sworn Appraisers.*
G. H., }

[No. 35.]

Collector's affidavit of goods and chattels distrained.

County, ss.

A. B. of the town of , being duly sworn, doth depose and say, that the tax assessed upon the property of G. H., as appears by the assessment roll of the taxable inhabitants of the town of , for the year 18 , is (*here insert the amount of the tax,*) which sum the said G. H. has refused to pay, (*or, state that the person cannot be found, as the case may be;*) that therefore, by virtue of a collector's warrant, he did, on the day of , 18 , levy upon and take the property of G. H. aforesaid, and proceed with the same according to law.

A. B.

Subscribed and sworn before me, }
this day of , 18 . }

[No. 36.]

Notice of levy and sale by collector.

By virtue of a collector's warrant, I have levied upon and taken the following goods and chattels of G. H., (*or, in the possession of G. H., as the case may be,*) viz: (*here insert a list of the articles:*) which I shall sell at public vendue, at in said town, on the day of next, at ten o'clock in the forenoon of that day.

Dated at , the day of , 18 .

A. B., *Collector.*

[No. 37.]

Affidavit that notice of sale has been given.

County, ss.

A. B. of the town of _____, in the county aforesaid, being duly sworn says, that on the _____ day of _____, 18____, he posted up in the town aforesaid, a notice of the sale of the goods and chattels of G. H., at the three following places, viz: (*here insert the three places at which the notices were posted up,*) and that said notices continued so posted up until the _____ of _____, 18____, the day appointed for the sale of said goods and chattels.

A. B.,

Subscribed and sworn before me, }
 this _____ day of _____ 18____. }

[No. 38.]

Application to compel a person to support a poor relative.

To the Court of Sessions of the county of _____

The application of the undersigned, overseers of the poor of the town of _____ in said county, respectfully represents, that O. P., a poor person, who is blind (*or old, lame, impotent or decrepit, according to the fact*), so as to be unable by work to maintain himself (*or herself, if a female*), is in said town; that Q. R., who dwells in said county, is the father of the said O. P. and has failed at his own charge to relieve and maintain the said O. P., in such manner as has been approved by the undersigned, overseers of the poor. Wherefore, pursuant to the provisions of section 2, title 1, chap. 20, part 1, of the Revised Statutes of the State of New-York, the undersigned hereby apply for an order to compel the said Q. R. who is of sufficient ability to maintain the said O. P., in the manner to be in such order specified.

Dated at the town of _____ this _____ day of _____

A. T., }
 H. S., } *Overseers of the Poor.*

[No. 39.]

Notice to relatives of application to court.

To G. H. of the town of _____ in the county of _____

Take notice, that on the _____ day of _____ at ten o'clock in the forenoon, at the court house in the town of _____

in said county, the undersigned, overseers of the poor of the town of _____ will apply to the court of sessions, of said county, for an order to compel the relief applied for, by the application of which a copy is hereto annexed; and which application will, at the time and place above mentioned, be presented to the said court.

Dated at _____ this _____ day of _____, 18 ____.

A. T., }
H. S., } *Overseers of the Poor.*

[No. 40.]

Affidavit of service of notice and application.

County of _____ ss :

W. G., of the town of _____ in said county, being duly sworn, says : that on the _____ day of _____ he served a copy of the annexed notice and application personally, (or, by leaving the same at his last place of dwelling with a person of mature age), on the therein named Q. R. _____ W. G.

Subscribed and sworn before me }
this _____ day of _____ 18 ____ . }

[No. 41.]

Notice of seizure of property.

County of _____, ss :

To the Court of Sessions of the county of _____.

The undersigned, to whom the annexed warrant is addressed, on the _____ day of _____, 18 ____, in the county of _____ therein mentioned, seized, by virtue of the said warrant, the property of which an inventory is hereunto annexed, and the proceedings of the undersigned, subsequent to the said seizure, are as follows : (*State the proceedings.*) All which is herewith returned.

Dated at _____ this _____ day of _____, 18 ____.

A. T., }
H. S., } *Overseers of the Poor.*

[No. 42.]

Form of bond to be given to the overseers of the poor.

Know all men by these presents, that we, _____ and _____, both of the town of _____, in the county of _____, are held and firmly bound unto _____, overseers of the poor of the town of _____, in the sum of _____ dollars, for the payment whereof to the said overseers, or their successors in office,

we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated at this day of , 18 .

The condition of this obligation is such, that whereas the said overseers of the poor have lately seized the property of the said , under a warrant issued by and , two justices of the peace of the county of , upon due proof to them given that said had absconded from his wife and children, leaving them chargeable (or likely to become chargeable,) upon the public for support; and the said having returned, and being desirous of having his property so taken restored to him: Now, therefore, if the said wife and children so abandoned, shall not become chargeable either to said town or county, then this obligation is to be void, otherwise of force.

N. O., [L. S.]
P. Q., [L. S.]

Sealed and delivered, and the security ap-
proved by and before us, two of the
justices of the town of }

} *Justices.*

[No. 43.]

Notice from one town to another, (in a county where the towns are liable to support their own poor), requiring the overseers of the town in which the pauper has a residence, to provide for his support.

County of , ss :

To the overseers of the poor of the town of , in said county: You are hereby notified that A. B., a pauper, who has gained a settlement in your town, to which he belongs, is in the town of , in said county, and is supported at the expense of the said town of , for which the undersigned are overseers. You are, therefore, required to provide for the relief and support of the said pauper.

Given under our hands at , this day of ,
18 .

A. T., } *Overseers of the poor of*
H. S., } *the town of .*

[This notice should be served on one of the overseers of the poor of the town where the pauper belongs, by some person who can make an affidavit of the service of such notice, if proof of the fact should become necessary. If the overseers to whom the foregoing notice is directed, intend to contest the allegation of the settlement of such pauper, they must, within ten days after the service thereof, give notice to the overseers of the town where such pauper may be, in the following form:]

[No. 44.]

Notice of intention to contest settlement.

County of _____, ss:

To the Overseers of the Poor of the town of _____, in said county: Please to take notice that the undersigned, overseers of the poor of the town of _____, in said county, will appear before the superintendents of the poor of the said county, at the poor house, (*or other place, as may be designated,*) on the _____ day of _____, at ten o'clock in the forenoon, to contest the alleged settlement of A. B., a pauper, as set forth in your notice of the instant.

Dated at _____, this _____ day of _____, 18 ____.

E. F., } *Overseers of the Poor of*
G. H., } *the town of _____.*

[No. 45.]

Order of the overseers of a town to remove a poor person to the county poor-house.

County of _____, ss:

B. B., having applied for relief to the overseers of the poor of the town of _____, who having inquired into the state and circumstances of the applicant, and it appearing that he (*or, she*) is in such indigent circumstances as to require permanent relief and support, and can be safely removed, the undersigned, overseers, hereby order the said A. B. to be removed to the county poor-house, to be relieved and provided for, as the necessities of such applicant may require, at the expense of the said county (*or, town, according to the fact, if in a county where the towns are required to support their own poor.*)

Given under our hands, at _____, this _____ day of _____, 18 ____.

A. T., } *Overseers of the Poor.*
H. S., }

[No. 46.]

Order for a pauper's relief where no county poor-house or other place has been provided for the reception of the poor.

County of _____, ss :

Application for relief having been made by A. B. to the undersigned, overseers of the poor of the town of _____, they, with the assistance of the undersigned, E. F., a justice of the peace of the same town, having inquired into the facts and circumstances of the case, find that the said A. B. has a legal settlement in the town of _____, in said county, (or, has not any legal settlement in any town in said county;) they therefore hereby order, pursuant to the provisions of § 43, (sec. 58,) title 1, chap. 20, part 1, of the Revised Statutes of this State, the following allowance to said A. B., weekly, (or, otherwise, to be here stated,) to wit, \$ _____, which the said justice and the said overseers (or, one of the said overseers) think required by the necessities of the said poor person, A. B.

Given under our hands, in the town of _____, this _____ day of _____, 18 _____.

A. T., } Overseers.
H. S., }
E. F., Justice.

[No. 47.]

Notice of overseers of a town to a superintendent.

To _____, a Superintendent of the Poor of the county of _____.

You are hereby notified that, on the application of A. B., a poor person, for relief, the undersigned, overseers of the poor of the town of _____, in said county, with the assistance of C. D., a justice of the peace of said town, inquired into the facts and circumstances of the case, and found that the said pauper had no legal settlement in any town in said county; and until the county superintendents take charge of said pauper, the overseers will provide for his support, and an account for the expense thereof from the time of the service of this notice will be presented as a charge against said county.

Given under our hands, at _____, this _____ day of _____, 18 _____.

A. T., } Overseers of the Poor.
H. S., }

[No. 47, A.]
Overseer's account.

Amount of moneys received.	When received.	From whom.	On what account.	Amount of moneys paid out.	When.	To whom.	On what authority.

[No. 48.]

Affidavit of service of notice on superintendent.

County of _____, ss :

E. F., one of the overseers of the poor of the town of _____, being sworn, says that a notice, of which the annexed is a copy, was by him served on J. K., one of the superintendents of the poor of said county, on the _____ day of _____, 18 .

Subscribed and sworn before me, }
 this _____ day of _____, 18 . }

E. F.

[No. 49.]

Form of indenture for binding out a child by overseers of the poor, and consent of justices.

Whereas, the parents of A. B., a female child, _____ years of age, have become chargeable to the town of _____, in the county of _____ : Now, therefore, this indenture, made the _____ day of _____, 18 , between A. T. and O. P., overseers of the poor, of said town (or city), of the first part, and G. H., of the town of _____, in the county of _____, of the second part, witnesseth, that the said parties of the first part, in consideration of the provisions of the statute in relation to children supported by the public, and the covenants hereinafter contained, do hereby bind the said A. B. to the said party, G. H., to serve in the employment of mantua-making (or, other service, as the case may be,) until the _____ day of _____ (Here insert a period not exceeding a time when the girl will be eighteen years of age.) And the said party of the second part, in consideration of the services of the said A. B., hereby, for himself, his heirs, executors and administrators, covenants to and with the said overseers of the poor, that (here state the conditions of the agreement.) And the said G. H. further covenants and agrees that he will cause the girl named in this indenture to be instructed to read and write, and at the expiration of her service will give her a new bible.

A. T., }
 O. P., } *Overseers of the Poor.*
 G. H.,

County of _____, ss :

The undersigned, two justices of the peace of the town of _____, in said county, having informed themselves fully of the age of the within named A. B., whose true age is _____ years, and is correctly stated in the within indenture, hereby give their consent to the binding out of the said A. B., according to the within indenture.

S. C., }
H. G., } *Justices.*

[No. 50.]

Designation of drunkard, and notice to tavern keepers, &c.

County of _____, ss :

The undersigned, overseers of the poor of the town of _____, in said county, having discovered A. B., to be an habitual drunkard, do hereby, pursuant to section 1, title 4, chap. 20, part 1, of the Revised Statutes, designate him as an habitual drunkard, and describe him as follows : (*Here description should be given.*) And every merchant, distiller, shop keeper, grocer, tavern keeper, or other dealer in spirituous liquors, is required not to give or sell, under any pretence, any spirituous liquors to the said A. B.

Given under our hands, at _____, this _____ day of _____, 18 ____.

A. T., }
H. G., } *Overseers of the Poor.*

[No. 51.]

Form of revocation by the overseers when a drunkard reforms.

County of _____, ss :

The undersigned, overseers of the poor of the town of _____, being satisfied that A. B., respecting whose drunkenness a notice has heretofore been given by the overseers of the poor of said town, has reformed and become temperate, hereby revoke and annul the notice given in the case of the said A. B., aforesaid.

Given under our hands, at _____; this _____ day of _____, 18 ____.

A. T., }
H. G., } *Overseers of the Poor.*

[No. 52.]

Application of the superintendents or overseers of the poor, relative to a bastard.

County of _____, ss :

To J. K., Esq., a Justice of the Peace of said county :

A. B., having been delivered of a bastard child, which is chargeable (*or*, likely to become chargeable) to the said county, (*or*, to the town of _____, in said county;) (*or*, A. B. being pregnant of a child likely to be born a bastard, and to become chargeable, &c.,) the undersigned, a superintendent of the poor of said county (*or*, overseer,) pursuant to statute, applies to you to make inquiry into the facts and circumstances of the case.

Dated at _____, this _____ day of _____, 18 ____.

C. D.,

*Superintendent of the Poor, or**A. T., Overseer.*

[No. 53.]

Form of examination before birth.

County of _____, ss :

A. B., of the town of _____, in said county, being duly sworn, says that she is now with child, and that the child of which she is pregnant is likely to be born a bastard, and to become chargeable to said county (*or*, to the town of _____, in said county); and that C. D. of _____, is the father of said child.

A. B.

Subscribed and sworn, this _____ day }
 of _____, 18 ____ , before me. }

S. C., *Justice.*

[No. 54.]

Examination after birth.

County of _____, ss :

E. B., of the town of _____, in said county, being duly sworn, says, that on the _____ day of _____ last, she was delivered of a bastard child, which is chargeable (*or*, likely to become chargeable) to said county, (*or*, to the town of _____, in said county;) and that C. D., of _____, is the father of said bastard child.

E. B.

Subscribed and sworn, this _____ day }
 of _____, 18 ____ , before me. }

S. C., *Justice.*

[No. 55.]

Notice, by superintendent or overseer, that application will be made to the sessions to increase the amount payable in the order of filiation.

To A. B., County, ss :

You will take notice, application will be made to the next court of sessions of the county of , to be holden at , in said county, on the day of , at ten o'clock in the forenoon, to increase the sum directed to be paid by the order of filiation, a copy of which is annexed, for the support of the bastard child named therein ; which application will be founded on the affidavits, copies of which are also annexed.

Dated at , this day of , 18 .

D. S., *Superintendent of the Poor, or*

A. T., *Overseer of the Poor.*

[No. 56.]

Notice to be given to superintendent or overseer for reducing amount in order of filiation.

To R. S., Superintendent (or, Overseer) of the Poor :

You are hereby notified that application will be made to the next court of sessions of the county of , to be holden at , in said county, on the , 18 , at o'clock in the forenoon, by the undersigned, to reduce the amount directed to be paid by the order, &c., of filiation made for the support of a bastard child, a copy of which order is annexed to this notice.

Dated at this day of , 18 .

A. B.

(This notice, as well as copies of any affidavits which the applicant may intend to present to the court, should be served on the superintendent or overseer, giving ten days' notice, by some person who can make an affidavit of the fact.)

[No. 57.]

Warrant to seize the goods of an absconding father, husband, or mother.

County of , ss :

To the Overseers of the Poor of the town of , in

said county: It appearing to us, two of the justices of the peace of said county, as well by the application and representation to us made by the said overseers, as upon due proof of the facts before us made, that O. P., late of said town, has absconded from his wife and children, leaving said wife and children chargeable (*or*, likely to become chargeable,) to the public for support; and that said O. P. has some estate, real or personal, in said county, whereby the public may be wholly, or in part, indemnified against said charge: we therefore authorize you, the said overseers of the poor, to take and to seize the goods, chattels, effects, things in action, and the lands and tenements of said O. P., wherever the same may be found in said county; and you will, immediately upon such seizure, make an inventory of the property by you taken, and return the same, together with your proceedings, to the next court of sessions of said county.

Given under our hands, in the town of _____, this
day of _____ 18 .

S. C., }
H. G., } *Justices.*

[By virtue of this warrant, the overseers may take possession of the property of the person absconding, according to sec. 9, title 1, and having made an inventory of the property, they should return the same to the next court of sessions, together with their proceedings.]

[No. 58.]

Form of order to discharge the warrant and to restore property.

County of _____, ss :

To the Overseers of the Poor of the town of _____, in said county: Whereas, by a warrant to you directed, bearing date the _____ day of _____, 18 _____, you were authorized to seize the goods, chattels, effects, things in action, and the lands and tenements of N. O., upon proof that he had absconded from his wife and children, leaving them chargeable to the public for support: And whereas, the said N. O. has returned, and now supports his wife and children so abandoned, (*or*, has given security to the overseers of the poor, satisfactory to us, that the wife and children shall not become chargeable either to said town or county,) we do therefore hereby discharge the said war-

rant issued against the said N. O., and direct the property taken by virtue thereof to be restored to him.

Witness our hands at , this day of , 18 .

S. C., }
H. G., } *Justices.*

[No. 59.]

Justice's order for a pauper who requires temporary relief, &c.

The overseers of the poor of the town of , having applied to the undersigned, a justice of the peace of said town, relative to A. B., a person applying to them for relief, and having examined into the facts and circumstances, and it appearing that the said A. B., so applying, requires only temporary relief, (or, is sick, lame, or otherwise disabled, so that he or she cannot be conveniently removed to the county poor-house,) the undersigned hereby orders the said overseers to apply dollars per week for the relief of said A. B., until they have expended the sum of ten dollars, or such sum less than that amount as may be found sufficient for the temporary relief of the said poor person, A. B.

Given in said town, the day of , 18 .

C. D., *Justice.*

[No. 60.]

Form of warrant to commit a child to the county poor-house.

County of , ss:

To any constable of said county, Greeting: Whereas, complaint has this day been made, and the proof thereof given to me, one of the justices of the peace of said county, that a child of the name of A. B. has been found in the town of , in said county, begging for alms. You are therefore hereby commanded, in the name of the people of the State of New-York, to convey the said child to the poor-house of said county (or, town, or the alms-house of said city,) the keeper whereof is required to detain, keep, employ and instruct said child in such useful labor as said child shall be able to perform, until discharged therefrom by the county superintendents of the poor, or bound out as an apprentice by them, (or, by the commissioners of such alms-house, or by the overseers of the poor.)

Given under my hand and seal, at , this day of , 18 .

S. C., *Justice.* [L. S.]

[No. 61.]

Form of warrant to confine a lunatic.

County of _____, ss :

To the Constables and Overseers of the Poor of the town of _____, in said county :

A. B., a lunatic, having been found in said town so far disordered in his senses as to endanger his own person (*or*, the person or property of others,) if permitted to go at large, and no provision having been made, either by the relatives or any committee, for confining or maintaining such lunatic, the undersigned, two of the justices of the peace of said county (*or*, city,) on the application of the overseers of the poor of said town (*or*, upon our own view,) being satisfied, upon examination (*or*, upon information on oath to us given,) that the said A. B. should be forthwith confined : You are, therefore, hereby commanded to cause the said lunatic to be safely locked up in such secure place as said overseers may provide in conformity to law.

Given under our hands, at _____, this _____ day of _____.

C. D., }
E. F., } *Justices.*

[No. 62.]

Form of notice to overseers of an habitual drunkard.

To the Overseers of the Poor of the town of _____ :

You are hereby notified that A. B., who has been designated by you as an habitual drunkard, has applied to me for process to summon a jury, to try and determine the fact of such drunkenness ; and that I have fixed upon the _____ day of _____ instant, at _____ o'clock in the afternoon, at my office in said town, as the time and place for such trial.

Dated _____, 18 _____.

E. S. P., *Justice of the Peace.*

[No. 63.]

Warrant to apprehend reputed father.

County of _____, ss :

To any constable of said county, Greeting : Whereas, A. B., of _____, in said county, upon her examination on oath before me, the undersigned, a justice of the peace of said county, this day

had, did declare that, &c. (*as in the examination ;*) and whereas, H. D. H., overseer of the poor of said town (*or, one of the superintendents, as the case may be,*) in order to indemnify the said town (*or, county*) in the premises, has applied to me to inquire into the facts and circumstances of the case, and to issue my warrant to apprehend the said C. D., &c. : You are therefore hereby commanded, in the name of the people of the State of New-York, forthwith to apprehend the said C. D., and bring him before me, at my office in aforesaid, for the purpose of having an adjudication respecting the filiation of such bastard child (*or, of such child likely to be born a bastard.*)

Given under my hand, , this day of , 18 .
S. C., *Justice.*

[If the person charged as the putative father resides in another county than that in which the warrant was issued, the justice issuing the warrant should direct, by endorsement thereon, the sum in which a bond shall be taken of the person so charged. The endorsement may be in the following form:]

“ I, the within named justice of the peace, direct that the penal sum, in which any bond shall be taken of the within named C. D., shall be one thousand dollars.

S. C., *Justice.*”

[Before the warrant is executed, it must be endorsed by some justice of the county where the person so charged resides. The endorsement is to be made upon proof of the hand-writing of the justice who issued the warrant. The endorsement may be as follows : See ante, page 201.]

County of , ss :

The within warrant, with the endorsement made thereon, by the justice by whom it was issued, of the sum required to be put in the bond, having been presented to the undersigned, a justice of the peace of the county of , and proof having been made of the handwriting of the justice who issued the said warrant, the arrest of the said C. D. is hereby authorized, if he can be found within the county of :

Dated at , this day of , 18 .

S. C., *Justice.*

[When the person charged is arrested, he should be taken before the justice who endorsed the warrant, or some other justice of

the same county, in order that he may be discharged on executing the bond required by law, if he elects so to do.]

[No. 64.]

Bond on arrest in foreign county.

Know all men by these presents: That we, C. D., and O. P., of _____, in the county of _____, are held and firmly bound unto the People of the State of New-York, in the sum of _____ dollars, for the payment whereof to the said people, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this _____ day of _____, 18 ____.*

Whereas, the said C. D. has been this day brought before the undersigned, one of the justices of the peace of the county of _____, by virtue of a warrant issued by J. B., one of the justices of the peace of the county of _____, whereon the name of the said justice is endorsed, with an authority to arrest the said C. D. in the said county of _____; in which warrant it is recited that A. M., of _____, in said county of _____, upon her examination, on oath, before the said J. B., justice, did declare herself pregnant of a child, which is likely to be born a bastard, and to become chargeable (*or*, did declare that she was, on the _____ day of _____, at _____ aforesaid, delivered of a bastard child, chargeable, or likely to become chargeable) to said town (*or* county;) and upon the said warrant is endorsed the direction of the said J. B., that the penal sum in which any bond should be taken of the said C. D., should be \$ ____: Now, therefore, if the said C. D., &c., (*Insert one of the conditions*,) then the above obligation to be void, otherwise of force.

Sealed and delivered in presence	}	C. D.,	[L. S.]
of, and the security approved		O. P.,	[L. S.]
by me.			

E. S. P., *Justice.*

[No. 65.]

Form of subpœna in such case.

County of _____, ss :

To John Doe, Richard Roe, &c., GREETING :

You are hereby commanded, in the name of the People of the

State of New-York, personally to appear before G. C. S., and the undersigned, two of the justices of the peace of said county, forthwith, (*or, the time agreed on,*) at the office of the undersigned, in _____ in said county, to testify touching the father of a bastard child wherewith A. B. alleges she is now pregnant, (*or, which was lately born of A. B.*)

Given under my hand, this _____ day of _____, 18 ____
S. C., *Justice of the Peace.*

[No. 66.]

Bond on adjournment before justices who issued warrant.

Know all men, &c., (*as in No. 64, down to the *, and then add*) the condition of this obligation is such that, whereas, the undersigned, C. D., has this day been brought before _____ and _____, two of the justices of the peace of said county, charged, upon the oath of A. B., of _____, aforesaid, as the reputed father of a bastard child, with which the said A. B. alleges she is pregnant (*or, of a bastard child lately born of said A. B.*) And, whereas, at the request of the said C. D., and for sufficient reasons given, the said justices have determined to adjourn the said examination and adjudication respecting the charge aforesaid, upon the execution of this bond, until the _____ day of _____, inst., at _____ o'clock in the _____ noon, at the office of the said _____, in _____ : Now, therefore, if the said C. D. shall personally appear before the said justices, at the time and place last aforesaid, and not depart therefrom without leave, then this obligation is to be void, otherwise in force.

Sealed, &c.,

C. D., [L. S.]
E. F., [L. S.]

[No. 67.]

Order of filiation.

County of _____, ss :

Whereas, we, the subscribers, being two justices of the peace of said county, having this day associated at _____, in said county, upon the application of _____ and _____, overseers of the poor of the town of _____ (*or, superintendents*), for the purpose of making an examination and determination touching a certain bastard child, lately born in said town of the

body of A. B. (*or*, of a certain child wherewith A. B. is said to be pregnant, and which, when born, will be a bastard,) and chargeable (*or*, likely to become chargeable,) to said town (*or*, county), and of which child C. D. was alleged to be the father : And, whereas, we have duly examined the said A. B. on oath, in the presence of the said C. D., touching the father of said child, and have also heard the proofs and allegations to us offered in relation thereto, as well on the part and behalf of the said overseers (*or*, superintendents,) as of the said C. D., whereby it appears that the said A. B. was on the day of delivered of a bastard child* in said town (*or*, appears that the said A. B. is now pregnant of a child, which, when born, will be a bastard), and which is chargeable (*or*, likely to become chargeable) to said town (*or*, county), and that C. D. is the father of said child : We, therefore, adjudge him, the said C. D., to be the father of the said bastard child ; and thereupon, we hereby order that the said C. D. pay to the overseers of the poor of said town of (*or*, to the superintendents of the poor), for the support of said child, the weekly sum of one dollar, so long as said child shall continue chargeable to said town (*or*, county) ; and inasmuch as it appears to us, and we find, that the said A. B. is in indigent circumstances, we determine and order that said C. D. pay to the said overseers of the poor (*or*, superintendents), for the sustenance of the said A. B. during her confinement and recovery therefrom, the sum of dollars. And we do hereby certify the reasonable costs of apprehending and securing the said father, and of the order of filiation, at the sum of dollars.

Given under our hands, at , this day of , 18 .

S. C., }
H. G., } *Justices.*

[Upon receiving notice of the order of filiation, the reputed father must immediately pay the costs and execute the bond with one of the conditions specified in § 14, title vi. 2 R. S. 59, 4th ed. If he refuses to pay the costs, he may be committed, notwithstanding he may have given the bond. See ante, page 206.]

[No. 68.]

Bond under order of filiation. 2 R. S. 59, 4th ed.

Know all men, &c. (*as in No. 64 to the *, and then add,*) the condition of this obligation is such that, whereas, by an order this

day duly made and subscribed by the subscribers, justices of the peace of said county, it is adjudged that the said C. D. is the father of a bastard child of which A. B. is pregnant, and likely to become chargeable (*or, of a bastard child lately born in said town of A. B., and which is chargeable*) to said town (*or, county ;*) and it was thereupon ordered by the said justices, that, &c., (*recite the order for the support of the bastard and sustenance of the mother, as in No. 67.*) Now, therefore, if the said C. D. shall pay the sums for the support of the bastard child and the sustenance of its mother, as the same are ordered by the said justices, as aforesaid, or as shall at any time hereafter be ordered by the court of sessions of said county, and shall fully and amply indemnify the said town (*or, county,*) and every other county, town or city, which may have incurred any expense, or may be put to any expense, for the support of such child or its mother during her confinement or recovery therefrom, against all such expenses, then this obligation to be void ; otherwise of force.

C. D.	[L. S.]
E. T.	[L. S.]
G. H.	[L. S.]

Sealed and delivered in presence of
 and the penalties and securities }
 approved by us.

} *Justices.*

[No. 69.]

Warrant to commit putative father. 2 R. S. 59, 4th ed.

County of _____, ss :

To any constable of said county, Greeting : Whereas, by an order of filiation this day made by us, the undersigned, justices of the peace of said county, at _____, in said county, we did adjudge C. D. to be the father of a bastard child, begotten upon the body of A. B. of said town, and did therein order that the said C. D. pay &c. (*set forth the direction for the support of the child, the sustenance of the mother, and the amount of costs and charges required to be paid, as expressed in the order :*) And whereas, upon the making and subscribing such order, we did require the said C. D. immediately to pay the costs, so certified, and to enter into a bond, in the penal sum of _____ dollars, with good and suffi-

cient sureties, to be by us approved, with one or other of the conditions which, by the statute in such case made and provided, is prescribed: And whereas, due notice of our said order has been given to the said C. D., but he has wholly neglected either to pay the said costs and charges, or to execute the bond as aforesaid (*or as the fact may be.*) You are therefore hereby commanded, in the name of the people of the State of New-York, to convey the said C. D. to the common jail of the said county, the keeper whereof is required to receive and detain the said C. D. in custody in said jail until he shall be discharged by the court of sessions of the said county, or shall execute such bond, in the penalty required, as aforesaid.

Given under our hands, at _____, this day of _____, 18 ____.

} *Justices.*

[No. 70.]

Order of filiation in the absence of the reputed father, apprehended in a foreign county.

County of _____, ss :

C. D. having been arrested in the county of _____, in the State of New-York, by virtue of a warrant and the direction thereon endorsed, of which the following are copies, to wit: (*insert copies,*) and been carried before _____, Esq., a justice of the peace of said county of _____, who took from him, the said C. D., a bond to the people of the State of New-York, with good and sufficient sureties, in the sum so directed on said warrant, conditioned that the said C. D. should appear at the next court of sessions to be holden in the county of _____, and not depart the court without its leave; and the said bond having been in due form of law returned to the undersigned, _____, the justice who issued the said warrant, he the said justice thereupon immediately called to his aid the undersigned, _____, another justice of the same county, and the subscribers, the said justices, proceeded to make examination of the matter, on the _____ day of _____, 18 ____, at _____, in said town, and then and there heard the proofs that were offered in relation thereto; by which it was proven that the said A. B., being in the said town of _____, has been delivered of a bastard child. (*conclude as in No. 67, from the*.*)

[No. 71.]

Warrant to commit mother who refuses to disclose the name of the father, under 2 R. S., 60, 4th ed.

County of _____, ss :

To any constable of said county, Greeting :

Whereas we, the subscribers, justices of the peace of said county, are now associated for the purpose of examining into the matter, and making order for the indemnity of the town of _____, in said county (*or*, for the indemnity of the said county), against the support of a certain child, said to have been born a bastard of the body of A. B., and chargeable (*or*, likely to become chargeable) to said town (*or*, county), and whereas upon the application of L. M., overseer of the poor of said town (*or*, a superintendent of the poor of said county), have demanded of the said A. B., who is now before us, that she submit to an examination on oath, in the presence of C. D., who has been brought before us, charged with being the father of said child, to testify touching such charge, and to disclose his name, but the said A. B. wholly refuses to testify and disclose; and inasmuch as it now appears to us, upon due proof thereof given on oath before us, that more than a month has elapsed since the said A. B. was delivered of said child, and that she is now sufficiently recovered from confinement: You are therefore hereby commanded, in the name of the people of the State of New-York, to take the said A. B., and convey her to the common jail of said county, the keeper whereof is required to detain the said A. B. in his custody in said jail until she shall so testify and disclose the name of such father.

Given under our hands, at _____, this _____ day of _____, 18 ____.

} *Justices.*

[No. 72.]

Summons where mother has property.

County of _____, ss :

To any constable of said county, Greeting :

You are hereby required to summon A. B., of the town of _____, in said county, to appear before us, the subscribers, justices of the peace of said county, on the _____ day of _____, instant, at two o'clock in the afternoon, at the office of the undersigned, S. C., to show cause, if any she may have, why we should not make an

order for the keeping of a bastard child, said to have been lately born of the said A. B., and chargeable (*or*, likely to become chargeable) to said county (*or*, town), by charging the said A. B. with the payment of money weekly, or other sustentation; E. F., overseer of the poor of said town (*or*, superintendent of the poor of said county), having applied to us for that purpose.

Given under our hands, at _____, this _____ day of _____, 18 ____.

S. C. }
H. G. } *Justices of the Peace.*

[No. 73.]

*Order to compel the mother to pay for the support of the child,
under sec. 21, 2 R. S. 60, 4th ed.*

County of _____, ss :

Whereas, E. F., one of the superintendents of the poor of said county (*or*, G. H., overseer of the poor of the town of _____, in said county), has made application to us, two of the justices of the peace of said county, complaining that A. B., of _____, in said county, was lately delivered at _____ aforesaid, of a bastard child, which is chargeable (*or*, likely to become chargeable) to said county (*or* town); and that said A. B. is possessed of property in her own right, and is of sufficient ability to support said child, and desiring that we should examine into the matter, and make order for the security of said county (*or* town). And whereas, upon examination into the matter of said application, and upon due proof thereof, on oath before us given, and the said A. B., although present at such examination, not showing any sufficient cause to the contrary (*or*, and the said A. B. neglecting to appear before us and show cause, if any she might have to the contrary, although duly summoned so to appear), we therefore order that the said A. B. pay weekly to said superintendent (*or*, to said overseer) the sum of _____, for the support of said child.

Given under our hands, at _____, this _____ day of _____, 18 ____.

J. K., }
H. G., } *Justices.*

[No. 74.]

Warrant to commit for not executing bond, under section 22, same statute.

County of _____, ss :

To any constable of said county, Greeting :

Whereas, by an order duly made by us, the undersigned, justices of the peace of said county, bearing date the _____ day of _____, instant, respecting the keeping of a bastard child, lately born in said county of the body of A. B., which is chargeable to the town of _____ (or, said county), we directed, (*as in the order*); which order was so made upon the application of J. R. S., overseer of the poor of said town (or, a superintendent of the poor of said county), and after due notice to the said A. B. to show cause, if any she might have, against the making of such order; and, whereas, a copy of said order, subscribed by us, has been served upon the said A. B., and she has neither executed the bond by law required for her appearance at the next court of sessions, &c., nor complied with the same: You are therefore hereby commanded, in the name of the people of the State of New-York, to take the said A. B., and convey her to the common jail of said county, there to remain, without bail, until she shall comply with said order, or execute the bond authorized by statute as aforesaid.

Given under our hands, at _____, this _____ day of _____, 18 ____.

S. C., }
H. G., } *Justices.*

[No. 75.]

Process to compel the mother's attendance.

County of _____, ss .

To any constable of said county, Greeting :

Whereas, we, the undernamed justices of the peace of said county, have, upon the application of the overseers of the poor of the town of _____, in said county (or, the superintendents of the poor of said county), associated for the purpose of examining into the matter of a certain complaint made to us by said overseers (or, superintendents), that A. B., of said town, is now pregnant with a child, which, when born, will be a bastard, and which is likely to become chargeable to said town (or, county) (or, that A. B. has been delivered in said town of a bastard child, which is chargeable, or likely to become chargeable, to said town or county);

and C. D. having been brought before us this day, charged to be the putative father of said child : Now, therefore, to the intent that the said A. B. may be examined before us, on oath, and in the presence of the said C. D., touching the father of said child, you are hereby commanded, in the name of the people of the State of New-York, to bring the said A. B., forthwith, before us, at the office of the subscriber, H. G., in _____, aforesaid.

Given under our hands, at _____, this _____ day of _____, 18 ____.

S. C., }
H. G., } *Justices.*

[No. 76.]

Warrant to seize the property of absconding father or mother of bastard, under sec. 52. 2 R. S. 65, 4th ed.

County of _____, ss:

To the Overseers of the Poor of the town of _____ in said county (*or*, to the Superintendents of the Poor of said county) :

It appearing to us, two of the justices of the peace of said county, as well by the representation and application to us made by the said overseers (*or*, the said superintendents,) as upon due proof of the facts before us given, that C. D. is the father of a bastard child whereof A. B., of said town, is now pregnant, and which, when born, is likely to become chargeable to said town (*or* county,) (*or*, that C. D. is the father of a bastard child lately born in said town, of A. B., and which is chargeable, or likely to become chargeable to said town,) (*or* county,) and that said C. D. has absconded from said town, which is the place of his ordinary residence, leaving in said county some estate, real or personal : We therefore, (*conclude as in No. 57.*)

[No. 77.]

Order reducing sum to be paid by father or mother.

County of _____, ss:

To the Overseers of the Poor of the town of _____ in said county (*or*, the Superintendents of the Poor of said county) :

Whereas, by an order of filiation by us made, bearing date the _____ day of _____ last, we did determine that C. D. is the father of a certain bastard child, then lately born in _____ aforesaid, and did therein order, among other things, that the said C. D. should pay to you, the said overseers (*or*, superintendents,) for the sup-

port of said child, the weekly sum of one dollar, so long as said child should continue chargeable to said town (*or*, county.) And whereas, upon the application of the said C. D., we have this day inquired into the circumstances of the case, and heard the proofs and allegations to us submitted in relation thereto ; and it appearing to us, upon such inquiry, that the circumstances in relation to said bastard child render it proper and expedient that the sum required to be paid by the said C. D., by our former order, should be reduced, as hereinafter expressed : And inasmuch as the said overseers (*or*, superintendents) have shown before us no sufficient reason against such reduction, although appearing before us (*or*, notified to appear before us and show cause, if any you might have,) we do therefore reduce the sum required to be paid by the said C. D., by our former order as aforesaid, to the weekly sum of .

Given under our hands, this day of , 18 .

S. C., }
H. G., } *Justices.*

[No. 78.]

Notice of appeal respecting order of filiation.

County of , ss :

To S. C. and H. G., Esqs., two Justices of the Peace of said county :

You will please take notice that the subscriber conceiving himself aggrieved by the order made by you, of which a copy is annexed, hereby appeals therefrom to the next court of sessions to be holden in said county.

Dated at , this day of , 18 .

O. R.

[No. 79.]

Bond of superintendents of the poor.

Know all men by these presents, that we C. D., E. F., and G. H., of are held and firmly bound unto the supervisors of the county of , in the penal sum of dollars, lawful money of the United States of America, to be paid to the said supervisors, or their successors ; for which payment, well and truly to be made we bind ourselves, and our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, dated the day of 18 .

The condition of this obligation is as follows: Whereas the said C. D. has been elected superintendent of the poor for the county of _____, and his term of office will commence on the _____ day of _____, 18 ____.

Now, therefore, if the said C. D. shall faithfully execute the duties of his office, and shall pay according to law all moneys that shall come into his hands as superintendent of the poor, and render a just and true account thereof to the board of supervisors of the county of _____, then the above obligation to be void, otherwise to remain in full force and virtue.

Sealed and delivered in presence of

C. D.	[L. S.]
E. F.	[L. S.]
G. H.	[L. S.]

I hereby certify that the above bond and the sureties therein were duly approved by the board of supervisors this _____ day of _____ 18 ____.

E. S. P.,

Clerk of the Board of Supervisors.

[No. 80.]

Subpœna to compel attendance of witnesses before superintendents.

County of _____, ss :

The people of the State of New-York to C. D. : You are hereby required, personally to appear before the undersigned, superintendents of the poor of the said county, at the poor-house, (*or, such place as is designated in the notice*), on the day of _____, 18 __, at ten o'clock in the forenoon, to testify in behalf of the overseers of the poor of the town of _____, in said county, concerning the alleged settlement of A. B., a pauper.

Dated at _____, this _____ day of _____, 18 ____.

G. H.,	} <i>Superintendents of the Poor.</i>
L. M.,	
O. P.,	

[No. 81.]

Superintendent's decision as to settlement of a pauper.

County of _____, ss :

The undersigned, superintendents of the poor of said county, having convened as required by the overseers of the poor of the town of _____, in said county, pursuant to their notice, proceeded

to hear and determine a controversy which had arisen between the said overseers and the overseers of the town of _____, in said county, concerning the settlement of G. H., a pauper, and upon such hearing of the facts, the undersigned hereby decide, that the legal settlement of the said G. H., as such pauper, is (*or, is not*), in the said town of _____. And the undersigned hereby award to the overseers of the poor of the town of _____, the prevailing party, the sum of _____ dollars, costs of said proceeding, by them expended.

Given under our hands and seals at _____, this _____ day of _____, 18 ____.

A. B.,	[L. S.]	} <i>Superintendents of the Poor.</i>
C. D.,	[L. S.]	
E. F.,	[L. S.]	

[No. 82.]

Superintendent's notice that pauper will be supported at the expense of a town in a county where the towns support their own poor.

County of _____, ss :

To the Overseers of the Poor of the town of _____, in said county : G. H., a pauper, having been sent to the poor house as a county pauper, and the undersigned, superintendents of the poor of said county, having inquired into the fact, and being of the opinion that the said pauper has a legal settlement in the town of _____, in said county, pursuant to the provisions of section 35, title 1, chapter 20, part 1 of the Revised Statutes, you are hereby notified that the expenses of the support of said pauper will be charged to the town of _____, unless you, the overseers of said town, within _____ (*Here insert such time, not less than twenty days, as the superintendents shall appoint,*) after the service of this notice, show that the said town of _____ ought not to be so charged.

Dated at _____, this _____ day of _____, 18 ____.

A. B.,	} <i>Superintendents.</i>
C. D.,	
E. F.,	

[No. 83.]

Decision of superintendents after re-examining settlement of pauper, on application of overseers.

County of _____, ss :

The undersigned, superintendents of the poor of the said county

having, on application of the overseers of the poor of the town of _____, on whom the notice of which the annexed is a copy, was served, re-examined the subject matter of the said notice, and taken testimony in relation thereto, do hereby decide that the pauper, G. H., therein mentioned, has a legal settlement in the said town of _____, to which, as such pauper, he belongs, (or, has not a legal settlement in the said town of _____.)

Given under our hands, at _____, this _____ day of _____ 18 ____.

A. B., }
C. D., } *Superintendents of*
E. F., } *the Poor.*

[No. 84.]

Certificate of a superintendent that a person is a county pauper, on application of overseers of a town.

County of _____, ss :

The overseers of the poor of the town of _____, having given notice to the undersigned that A. B., a poor person, being in said town, should be supported as a county pauper, and having inquired into the circumstances, and being satisfied that the said pauper has not gained a legal settlement in any town in the said county, this certificate of that fact is hereby given ; and that the said A. B. is chargeable to the said county.

Dated at _____, this _____ day of _____, 18 ____.
C. D., *Superintendent.*

[No. 85.]

Notice to overseers that superintendents will examine into settlement of paupers.

County of _____, ss :

To the Overseers of the town of _____, in said county :

You are hereby notified, that on the _____ day of _____, at ten o'clock in the forenoon of that day, the board of superintendents of the poor of said county will proceed to a hearing of the allegations and proofs which may then be presented in relation to the legal settlement of A. B., in the town of _____. And after such hearing, will affirm or annul the certificate given on the day of _____, 18 ____, declaring that the said A. B. was chargeable upon the said county.

Dated at _____, this _____ day of _____, 18 ____.

B. C., }
C. D., } *Superintendents of the Poor.*

[No. 86.]

Decision of the board of county superintendents, annulling the certificate.

County of _____, ss :

C. D., one of the superintendents of the poor of said county, having reported to the board of county superintendents of the poor for said county the case mentioned in the certificate, a duplicate or copy whereof is hereunto annexed, the said board, after due notice given to the overseers of the poor of the town of _____, in said county, and after hearing the allegations and proofs in the premises, do hereby annul the said certificate so given, and do decide that the legal settlement of A. B. is in the town of _____, in said county.

Dated at _____, this _____ day of _____, 18 ____.

B. C.,	}	<i>Superintendents of the Poor.</i>
C. D.,		

[No. 87.]

Decision by the board of county superintendents, as to the refusal of a superintendent to give the certificate.

County of _____, ss :

Notice having been given, by the overseers of the poor of the town of _____, in said county, to C. D., one of the superintendents of the poor of said county, that A. B., a poor person, being in said town, should be supported as a county pauper, and the said superintendent having refused (*or*, neglected) to give the certificate prescribed by § 36, title 1, chapter 20, part 1, of the Revised Statutes of the State of New-York, and the undersigned, constituting the board of county superintendents of the poor for said county, having, on application of the said overseers, summarily heard the matter, hereby determine and decide that the said pauper hath not gained a legal settlement in any town of the said county, and should be supported as a county pauper (*or*, hath gained a legal settlement in the town of _____, in said county, *as the case may be.*) And the superintendents hereby award to the overseers of the town of _____ the sum

of (*here insert a sum not exceeding \$10,*) costs of said proceeding by them in this behalf expended.

Certified under our hands, at _____, this _____ day of _____, 18 ____.

B. C., }
C. D., } *Superintendents of the Poor.*

[No. 88.]

Superintendents' order to pay expenses incurred by overseers previous to the removal of a pauper.

To the Treasurer of the county of _____ :

Pay to the overseers of the poor of the town of _____, in said county, _____ dollars, a sum which was necessarily paid out or contracted to be paid for the relief or support of A. B., a pauper, previous to his removal to the county poor-house, and which sum the undersigned, superintendents of the poor of said county, judged was reasonably expended by the said overseers, before the said pauper could properly be removed, and charge the same to the county (*or, if a town pauper, to the town of _____, in said county.*)

Given under our hands, at _____, this _____ day of _____, 18 ____.

B. C., }
C. D., } *Superintendents of the Poor.*

[No. 89.]

Superintendents' sanction of relief for pauper who cannot be removed to poor-house.

County of _____, ss:

The undersigned, one of the superintendents of the poor of the county of _____, having been applied to by the overseers of the poor of the town of _____, in said county, to give his sanction for the expenditure of a greater sum than ten dollars for the relief of A. B., as authorized by the justice's order hereunto annexed, and having inquired into the facts of the case, and being satisfied that the said A. B. cannot properly be removed to the county poor-house, and that he is in need of further relief, hereby gives his sanction to the continuance of the weekly allowance specified in said order, until the expenditure amounts to _____ dollars, over and above the sum of ten dollars authorized by the jus-

tice's order in this case, and to be charged to the county (*or, town*), as specified in said order.

Given under my hand, at _____, this _____ day of _____, 18 ____ .
C. D., *Superintendent of the Poor.*

[No. 90.]

Notice of the improper removal of a pauper from another county.

County of _____, ss :

To the Superintendents of the Poor of the county of _____ :

You are hereby notified that A. B., a poor and indigent person, has been improperly sent (*or, carried, transported, brought, or removed, or enticed to remove, as the case may be*), from the said county of _____ to the county of _____, without legal authority, and there left with intent to make the said county of _____, to which the said removal was made, chargeable with the support of the said pauper. You are, therefore, pursuant to the provisions of § 59, title 1, chap. 20, part 1, of the Revised Statutes of the State of New-York, required forthwith to take charge of such pauper.

Given at _____, in said county of _____, the _____ day of _____, 18 ____ .
B. C., } *Superintendents of the Poor of*
C. D., } *the county of _____.*

[If a town in the county from which the pauper has been removed is liable for his support, then the foregoing notice will be served on one of the overseers of the poor of such town, and the notice will be varied accordingly. Service of the notice on one superintendent is sufficient; and the person serving the notice should be able to make an affidavit as to the time of service, connected with a copy of the notice served. If the superintendents or overseers on whom the notice is served, do not acquiesce in its allegations, they must, within thirty days after the service thereof, serve on the county superintendents from whom the same was received, or one of them, a notice, which may be in the following form :]

[No. 91.]

Superintendents' denial of removing paupers improperly.

County of _____, ss :

To the Superintendents of the Poor of _____ county.

You are hereby notified that the undersigned, superintendents

of the poor of the county of _____, deny the allegation contained in your notice, of the supposed improper removal of A. B., as mentioned in your notice to the undersigned, in the manner and with the intent in said notice alleged.

Given under our hands, at _____, this _____ day of _____, 18 ____.

B. C., } *Superintendents of the Poor of*
C. D., } *the county of* _____.

[This notice may be used by the overseers of a town in denying the allegation of the superintendents that their town is liable for the support of the pauper, by so varying the form as to make it applicable to overseers of a town, instead of superintendents of a county.]

[No. 92.]

Form of indenture for binding out a child by superintendents of the poor.

Whereas, A. B., a male child, _____ years of age, hath been sent to the county poor-house, in the county of _____, in the State of New-York: Now, therefore, this indenture, made the _____ day of _____, 18 __, between _____ and _____, county superintendents of the poor of the said county of the first part, and C. D., of _____, in the county of _____, of the second part, witnesseth, that the said parties of the first part, in consideration of the provisions of the statute in relation to children supported by the public, and of the covenants hereinafter contained, do hereby bind the said A. B. to the said C. D., to serve as apprentice (*or, clerk*) to the trade of _____ (*or, employment or profession,*) until (*Here insert a time, not exceeding the time when the boy will be twenty-one, or, if a girl, eighteen.*) And the said party of the second part, in consideration of the above, and of \$ _____ to him paid, (*or, agreed to be paid,*) as hereinafter stated in relation to the said binding out of the said apprentice, (*or clerk,*) hereby, for himself, his heirs, executors and administrators, covenants to and with the said party of the first part, that (*Here state the whole agreement.*) And the said C. D. further covenants and agrees that he will cause such child to be instructed to read and write, and also in the general rules of arithmetic; and he fur-

ther agrees that he will give to such apprentice, at the expiration of his service, a new bible.

Signed and sealed }	[L. S.] }	Superintendents
in presence of }	[L. S.] }	of the Poor.
	C. D.,	[L. S.]

[No. 93.]

Acknowledgment of a deed by a grantor known to the officer.

STATE OF NEW-YORK, }
County, } ss.

On this day of , in the year
C. D. came before me, and personally acknowledged that he had executed the within conveyance: and I certify, that I know the said C. D., who made the said acknowledgment, to be the individual, described in, and who executed the said conveyance.

A. B., *Justice of the Peace.*

[No. 94.]

Acknowledgment by grantor, identified by a witness.

STATE OF NEW-YORK, }
County, } ss.

On the day of , in the year , C. D. came before me, and acknowledged that he had executed the within conveyance; and at the same time came E. F., residing in the town of , in said county, who being duly sworn by me, deposed and said, that he knew the person making the said acknowledgment to be the individual described in, and who executed the said conveyance: which to me is satisfactory evidence thereof.

A. B.,
Justice of the Peace.

[No. 95.]

Acknowledgment by husband and wife, known to the officer.

STATE OF NEW-YORK, }
County, } ss.

On this day of , in the year , C. D. and Mary, his wife, came before me, and severally acknowledged that they had executed the within conveyance: and the said Mary, on a private examination, apart from her husband, acknowledged that she executed the said conveyance freely, and without any fear or compulsion of her husband—and I further certify, that I know the per-

sons who made the said acknowledgment, to be the same individuals described in, and who executed the said conveyance.

A. B.,

Justice of the Peace.

[No. 96.]

Acknowledgment by husband and wife, both identified by a witness.

STATE OF NEW-YORK, }
County, } ss.

On the day of , in the year , C. D. and Mary his wife personally came before me, and severally acknowledged that they had executed the within conveyance : and the said Mary, on a private examination, apart from her husband, acknowledged that she executed the same freely, without any fear or compulsion of her husband : and at the same time appeared E. F., residing in the town of , in said county, who being by me duly sworn, deposed and said, that he knew the persons making the acknowledgment as aforesaid, to be the same individuals described in, and who executed the within conveyance, which to me is satisfactory evidence thereof.

A. B.,

Justice of the Peace.

[No. 97.]

Acknowledgment by husband and wife—husband known and wife identified.

STATE OF NEW-YORK, }
County, } ss.

On the day of , in the year , C. D. and Mary his wife personally came before me, and severally acknowledged that they had executed the within conveyance : and I certify, that I know the said C. D. to be one of the individuals described in, and who executed the same : and the said Mary, on a private examination, apart from her husband, acknowledged that she executed the said conveyance freely, without any fear or compulsion of her husband : and at the same time appeared E. F., residing in the town of , in the county aforesaid, who being by me duly sworn, deposed and said, that he knew the said Mary, who made the acknowledgment as aforesaid, to be the same individual

described in, and who executed the within conveyance, which is to me satisfactory evidence thereof.

A. B.,
Justice of the Peace.

[No. 98.]

Acknowledgment by four persons, two known, and two identified.

STATE OF NEW-YORK, }
County, } ss:

On the day of , in the year , A. B., C. D., E. F., and G. H., personally came before me, and severally acknowledged that they had executed the within conveyance: and at the same time appeared J. M., residing in the town of , in said county, who being by me duly sworn, deposed and said, that he knew A. B. and C. D., two of the persons making the said acknowledgment, to be two of the individuals described in, and who executed the within conveyance, which is to me satisfactory evidence thereof, And I further certify, that I know E. F. and G. H., the two other persons making the said acknowledgment, to be the other two persons described in, and who executed the said conveyance.

J. K.,
Justice of the Peace.

[No. 99.]

Acknowledgment by a person conveying by virtue of a power of attorney.

STATE OF NEW-YORK, }
County, } ss.

On the day of , in the year , C. D. personally came before me, and acknowledged that he had executed the within conveyance as the act and deed of E. F., therein described, by virtue of a power of attorney, duly executed by the said E. F., bearing date the day of , in the year , recorded in the office of the clerk of the county of . And I further certify, that I know the said C. D., who made the said acknowledgment, to be the same individual who executed the within conveyance: (or if the person is unknown to the officer, and is identified, say,) and at the same time appeared G. H., of the town of , and county aforesaid, who being by me duly sworn, deposed and said, that he knew the individual who made the said

acknowledgment to be the same person who executed the within conveyance, which is to me satisfactory evidence thereof.

A. B., *Justice of the Peace.*

[No. 100.]

Acknowledgment by a deputy sheriff, of a deed executed by him in the name of the sheriff.

STATE OF NEW-YORK, }
County, } ss.

On the day of , in the year , A. S. W. came before me, and personally acknowledged that he, as a general deputy of B. H., Esq., the sheriff of the county of , had executed the within conveyance, in the name and as the act and deed of said sheriff: and I certify, that I know the said A. S. W., who made the said acknowledgment, to be the individual described in, and who executed the said conveyance.

A. B., *Justice of the Peace.*

[No. 101.]

Proof of a deed by a subscribing witness who is known to the officer.

STATE OF NEW-YORK, }
County, } ss.

On this day of , in the year , C. D., with whom I am personally acquainted, came before me, and being by me duly sworn, deposes and says, that he is a resident of the town of , in the county of , that he saw E. F. execute the within conveyance, that he the said C. D. subscribed his name thereto as a witness, and that he knew the said E. F. to be the person described in, and who executed the said conveyance.

A. B., *Justice of the Peace.*

[No. 102.]

Proof by a subscribing witness not known to the officer, but identified by another witness.

STATE OF NEW-YORK, }
County, } ss.

On this day of , in the year , C. D. came before me, and being by me duly sworn, deposes and says, that he resides in the town of , in the county of ; that he saw E. F. execute the within conveyance; that he the said C. D. subscribed his name thereto as a witness, and that he knew the

said E. F. to be the person described in, and who executed the said conveyance: And at the same time came before me G. H., residing in the town of _____, and county of _____, who being by me duly sworn, deposes and says, that he knows the said C. D. to be the same person who was a subscribing witness to the within conveyance, which is to me satisfactory evidence thereof.

A. B., *Justice of the Peace.*

[No. 103.]

Proof by subscribing witness of the execution of a deed by husband and wife residing out of the State, the subscribing witness being known to the officer.

STATE OF NEW-YORK, }
County, } ss.

On the _____ day of _____, in the year _____, C. D., with whom I am personally acquainted, came before me, and being by me duly sworn, deposes and says, that he resides in the town of _____, in the county of _____, and State of _____; that he saw E. F. and Mary his wife severally execute the within conveyance; that he subscribed his name thereto as a witness, and that he knew the said E. F. and Mary his wife to be the same persons described in, and who executed the said conveyance: and that at the time of the execution thereof, the said E. F. and Mary his wife were residents of the said town of _____, in the State of _____.

A. B., *Justice of the Peace.*

[No. 104.]

Proof by subscribing witness, identified in same case as preceding.

STATE OF NEW-YORK, }
County, } ss.

On the _____ day of _____, in the year _____, C. D. came before me, and being by me duly sworn, deposes and says, that he resides in the town of _____, in the county of _____, and State of _____, that he saw E. F., and Mary his wife, severally execute the within conveyance; that he subscribed his name thereto as a witness; that he knew the said E. F., and Mary his wife to be the same persons described in, and who executed the said conveyance; and that at the time of the execution thereof, they were residents of the said town of _____, in the State of _____.

At the same time appeared before me, G. H., residing in

the town of _____, county of _____, who being also by me duly sworn, deposed and said, that he knew the said C. D. to be the same person who was a subscribing witness to the within conveyance, which is to me satisfactory evidence thereof.

A. B., *Justice of the Peace.*

[No. 105.]

Proof as to husband by subscribing witness, and acknowledgment by wife—the wife and the subscribing witness being both known to the officer.

STATE OF NEW-YORK, }
County, } ss.

On the _____ day of _____, in the year _____, C. D., with whom I am personally acquainted, came before me, and being by me duly sworn, deposes and says, that he resides in the town of _____, in the county of _____; that he saw E. F. execute the within conveyance; that he subscribed his name thereto as a witness; that he knew the said E. F. to be one of the persons described in, and who executed the within conveyance. At the same time appeared before me M. F. the wife of the said E. F., who on a private examination, apart from her husband, acknowledged that she executed the within conveyance freely, and without any fear or compulsion of her husband. And I further certify, that I know the said M. F. to be the same person described in, and who executed the said conveyance.

A. B., *Justice of the Peace.*

[No. 106.]

The same, except that the wife and subscribing witness are both identified by another witness.

STATE OF NEW-YORK, }
County, } ss.

On the _____ day of _____, in the year _____, C. D. came before me, and being by me duly sworn, deposes and says, that he resides in the said town of _____, in the county of _____; that he saw E. F. execute the within conveyance; that he subscribed his name thereto as a witness, and that he knew the said E. F. to be the person described in, and who executed the said conveyance. At the same time appeared before me, M. F., the wife of the said E. F., who on a private examination, apart from

her husband, acknowledged that she executed the within conveyance freely, and without any fear or compulsion of her husband. And at the same time appeared before be, G. H., residing in the town of _____, and county of _____, who being by me duly sworn, deposes and says, that he knows the said C. D. to be the same person who was a subscribing witness to the within conveyance; and that he also knows the said M. F., who made the said acknowledgment, to be the individual described in, and who executed the within conveyance, which to me is satisfactory evidence thereof.

A. B., *Justice of the Peace.*

[No. 107.]

Proof of a deed executed by an incorporated company.

STATE OF NEW-YORK, }
County, } ss.

On the _____ day of _____, in the year _____, before me came T. L. D., the president of the Bank of Albany. with whom I am personally acquainted, and who being by me duly sworn, deposes and says, that he resides in the city of Albany, in said county; that he is the president of the Bank of Albany; that the seal affixed to the within indenture is the corporate seal of the president, directors, and company of the said bank, and was affixed to the said indenture by order of said directors, for the uses therein expressed; and that he, by like order, did subscribe his name thereto as president of said bank, which being to me satisfactory evidence of the due execution of said indenture, I allow it to be recorded.

L. M., *Justice of the Peace.*

[No. 108.]

Certificate of proof of the execution of a conveyance, when the subscribing witnesses are dead.

STATE OF NEW-YORK, }
County, } ss.

On the _____ day of _____, in the year _____, O. P. came before me, and being by me duly sworn, and the within deed of conveyance being shown to him, he deposes and says, That he knew the parties therein described; that he was well acquainted with A. B., the grantor; that he had frequently seen him write

and knew his handwriting; that the name of the said grantor subscribed to the said deed is in the proper handwriting of the said A. B.

And the said O. P. further deposes, that he was also well acquainted with E. F., one of the subscribing witnesses to the said deed, and with his handwriting; that said E. F., at the time of the date of said deed, resided in the said town of , in said county, and has been dead about four years; that his name subscribed as a witness to said deed is in the proper handwriting of the said E. F., deceased.

And the said O. P. further deposes, that at the time of the date of said deed, he was, and for several years had been, acquainted with one G. H., a shoemaker, who then resided in the said town of , and in the neighborhood of the said grantor; that the said G. H. died at the town of , aforesaid, about the year 18 , and since the date of said deed; that deponent was not acquainted with the handwriting of the said G. H.; that he has never known or heard of any other person of the name of G. H., and he cannot say in whose handwriting the name last mentioned is subscribed to the said deed.

And I certify, that the deposition aforesaid of the said O. P., is to me satisfactory evidence of the death of all the witnesses to the said deed, and of the handwriting of E. F., one of the said witnesses and of the handwriting of the said A. B., the grantor.

W. G., *Justice of the Peace.*

[No. 109.]

Order dividing a town into road districts.

The undersigned, commissioners of highways of the town of , (or the undersigned two of the commissioners of highways of the town of , all the commissioners of said town,) having met and deliberated on the subject embraced in this order, (or the undersigned, two of the commissioners of highways of the town of , having met and deliberated on the subject embraced in this order, all the commissioners of highways of said town having been duly notified to attend the said meeting of the commissioners to deliberate thereon,) do hereby order that the said town be, and it hereby is divided, into road districts, as follows, to wit:

Road district number one, shall include (*insert such a descrip-*

tion as to include the intended highways, and the inhabitants on or near the same.) And all the inhabitants liable to work on highways residing therein shall be, and are hereby assigned to work on said district number one. (*And if any inhabitants residing out of the district be assigned to work therein, insert as follows:*) And the following inhabitants residing out of said district, are assigned and required to work within the same, to wit: J. C. and X. Y. District number two, &c. (*proceed in like manner until all are described.*)

In witness whereof, we have hereto subscribed our hands, this
day of , 18 .

S. R. }
D. V. } *Commissioners.*
T. G. }

[No. 110.]

*Appointment of overseer, by warrant of commissioners, where
a vacancy occurs.*

Town of }
County, } ss.

Whereas a vacancy has occurred in the office of overseer of highways for road district number of said town, by reason of the refusal of A. B., duly elected to said office, to serve, (*or as the case may be.*) Now, therefore, by virtue of the power vested in us by the statute in such case made, we, the undersigned commissioners of highways of said town, (*or the undersigned two of the commissioners of highways of said town, all the commissioners of said town,*) having met and deliberated on the subject embraced in this warrant, (*or the undersigned, two of the commissioners of highways of the town of , aforesaid, having met and deliberated on the subject embraced in this warrant, all the commissioners of highways in said town having been duly notified to attend the said meeting of the commissioners to deliberate thereon,*) do hereby, in order to fill such vacancy, appoint P. Q. overseer of highways, of and for said road district, number , in said town.

In witness whereof, we have hereto placed our hands, this
day of , 18 .

S. R. }
D. V. } *Commissioners.*
T. G. }

[No. 111.]

Overseer's list of persons in his district liable to highway labor, to be delivered by him to the town clerk, within sixteen days after his election or appointment.

I, A. B. overseer of highways for road district number , of the town of , do hereby certify that the following is a true list made by me of all the inhabitants in said road district number , who are liable to work on the highways. Dated the day of , 18 .

Names.

B. C.

L. M.

Names.

R. S.

H. J.

A. B.,

Overseer.

[No. 112.]

List and statement, by commissioners, of non-resident lands.

The commissioners of highways of the town of , at a meeting of which due notice was given to all the commissioners of highways of said town, and held on the day of , in the year 18 , have made out the following list and statement of the contents of all lots, pieces, or parcels of land within said town of , owned by non-residents therein, through which any road in said town doth run, or which bound upon or joins any road, and which in the judgment of the said commissioners will be enhanced in value by the highway labor to be assessed thereon.

Dated this day of , 18 .

Owners.

Number of
Road District.

Description
of Land.

Value.

S. R.

D. V.

T. G.

} Commissioners.

[No. 113.]

A list of the assessment of highway labor.

At a meeting of the commissioners of highways of the town of , held in said town on the day of , J. C., H. D., and T. J., the said commissioners, having proceeded to ascertain, estimate, and assess the highway labor to be performed in their town for the ensuing year, (if only two of them will agree

to the assessment roll as prepared, then insert, the undersigned, two of the said commissioners,) have made out the estimate and assessment for road district number , in said town, as follows:

(Or if only two of the commissioners were present at the assessment, then instead of the preceding say,) The undersigned, two of the commissioners of highways of the town of , having met in said town on the day of , and proceeded to ascertain, estimate, and assess the highway labor to be performed in their town for the ensuing year, all the commissioners of highways of said town having been duly notified to attend the said meeting of the commissioners for the purpose of deliberating thereon, have made out the estimate and assessment for road district number , in said town, as follows:

1. The inhabitants of said town assigned to said road district are assessed as follows, to wit:

Names.		Names.	
G. S.	1 day.	P. O.	2 days.
H. T.	3 days.	D. L.	10 days.

2. The lands owned by non-residents of said town, and situate therein, are assessed as follows, to wit:

Owner's name, if known.	Description of Land.	Value.	Assessment.
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In witness whereof, we have hereto subscribed our names, this day of , 18 .

J. C.,
H. D., } Commissioners.
T. J., }

[No. 114.]

Additional assessment by an overseer.

The quantity of labor assessed on the inhabitants of road district number , in the town of , being by me, the undersigned, overseer of highways in said district, deemed insufficient to keep the roads therein, in repair, I do therefore, in pursuance of the provisions of the statute in such case made, hereby make a further assessment, as follows, to wit:

Names.		Names.	
G. S.	2 days.	P. O.	4 days.
H. T.	1 day.	D. L.	5 days.

Dated the day of 18 .

X. Y., Overseer.

[No. 115.]

Agreement releasing right of way by commissioners and supervisor.

This indenture, made this day of , 18 , between A. B., supervisor of the town of and C. D. and E. F. commissioners of highways of said town of the first part, and road company of the second part, Witnesseth :

The said party of the first part, having first become satisfied that at least two-thirds of all the owners of land along the line of the plankroad (or turnpike road) hereinafter described, have consented in writing to the construction of such road, for value received, hereby agree to release, and do release and convey to the said party of the second part, the right to use and occupy the public highway (*here describe the same*) for the purposes of a plankroad, (or turnpike,) so long as the same shall be needed by said corporation.

In witness whereof we have hereunto set our hands this day of , 18 .

[No. 116.]

Consent for railroad to cross a highway.

Town of County, } ss.

We, the undersigned, commissioners of highways, of said town of , do hereby consent that the railroad company may construct a railroad across the public highway leading from (*describe the highway,*) provided that the usefulness of said highway be not impaired,

Given under our hands, this day of , 18 .

A. B., }
C. D., } *Commissioners.*
F. H., }

[No. 117.]

Notice by the overseer as to non-resident lands, to be affixed on the outer door of the building in which the last town meeting was held.

I, the undersigned, overseer of highways for road district number , in the town of , do hereby give notice, that the labor assessed on the several tracts of land hereafter mentioned, which have been assessed as owned by non-residents, is to be per-

formed on the day of next, on the highway of said district, between the dwelling-houses of J. M. and E. S., and the owners of said land, or their agents, are hereby required to cause the said labor to be performed accordingly.

Owner's names.	Description of land or tract.	Assessment.
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Dated the day of , 18 .

X. Y., *Overseer.*

[No. 118.]

*Complaint by an overseer to a justice, against a person notified,
for refusing to work, &c.*

X. Y., overseer of highways for road district number _____, of the town of _____, in the county of _____, on oath makes complaint to G. H., a justice of the peace of said town, that he gave to C. D., who resides in the said district, and is assessed to work on the highways therein, twenty-four hours previous notice, to appear with a hoe, on the _____ day of _____, instant, at 8 o'clock in the forenoon, at the dwelling-house of J. P., for the purpose of working on the highways in said district, under the direction of said X. Y., as overseer. And that the said C. D., neglected to appear either in person, or by an able-bodied man as a substitute, or to pay the commutation money for said work; nor has he rendered any excuse for such neglect.

X. Y.

Subscribed and sworn, the day }
of 18 , before me, }

G. H., *Justice of the Peace.*

[No. 119.]

*Complaint by an overseer to a justice, against a person notified,
for neglecting to furnish a team.*

Town of _____ County, } ss.

X. Y., overseer of highways for road district number _____, in said town, on oath makes complaint to G. H., a justice of the peace of said town, that he gave to C. D., who resides in the said district, and is assessed to work three days (*or more*) on the highways therein, and has a cart (*or, wagon, or, plow, as the case may be*), with a pair of horses (*or, oxen*), and a man to manage them, and

X. Y.

G. H., *Justice of the Peace.*

[No. 120.]

County , } ss.
Town of , }

Whereas, complaint hath been made to me the undersigned, a justice of the peace in and for said town, by X. Y., overseer of highways for road district number _____, in said town, that C. D., &c. (*recite the complaint.*) You are therefore, in the name of the people of the State of New-York, hereby commanded to summon the said C. D. forthwith to appear before me, at my office in said town, to show cause why he should not be fined according to law for such refusal or neglect, as in said complaint is alleged against him.

G. H., *Justice of the Peace.*

[No. 121.]

A list of all the lands of non-residents and of persons unknown, which were taxed on the lists of the undersigned overseer of highways for road district number _____, in the town of _____, on which the labor assessed by the commissioners of highways has not been paid, and the amount of labor unpaid.

Owners.	Description of land.	Days assessed	Days unpaid.
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Dated the day of , 18 . X. Y., *Overseer*.

[No. 122.]

Affidavit to be written on the above list.

County, ss.

X. Y., overseer of highways for road district number , in the town of , in said county, being duly sworn, saith, that in relation to the lands described in the above list, he has given the notices required by the thirty-third and thirty-fourth sections of title first, chapter sixteenth of part first of the Revised Statutes, and that the labor for which the said lands are returned has not been performed. A. B.

Subscribed and sworn before me, }
the day of , 18 . }

J. K.

[No. 123.]

Annual account of an overseer of highways.

The annual account of X. Y., overseer of highways for road district number , in the town of , rendered to the commissioners of highways of said town, on the day of , in the year .

1. The names of all persons assessed to work on the highways, in said road district number , of which I am overseer, are as follows, to wit :

*Names.**Names.*

2. The names of all those who have actually worked on the highways, with the number of days they have so worked, are as follows, to wit :

*Names.**Number of days worked.*

3. The names of all those who have been fined, and the sums in which they have been fined, are as follows, to wit :

*Names.**Amount of fines.*

4. The names of all those who have commuted, are as follows :

*Names.**Amount paid by each.*

5. And the moneys arising from said fines and commutations have been expended by me, as follows, to wit:

(Specify the items of expenditures, and the persons to whom paid.)

6. And the following is a list of all the lands which I have returned to H. D. H., the supervisor of said town, for the non-payment of taxes, and the amount of tax on each tract of land so returned:

Owner's names.	Description of lands.	Amount of tax.
----------------	-----------------------	----------------

Dated the day of , 18 .

X. Y., Overseer.

County, ss.

X. Y., overseer of highways for road district number , in the town of , being sworn, saith, that the preceding account is true.

Subscribed and sworn this day } X. Y.
of 18, before me, }

J. K.

[No. 124.]

Annual account of the commissioners of highways to town auditors.

The undersigned, commissioners of highways of the town of , hereby render their annual account to the board of town auditors, on the day of , 18 .

1. The labors assessed in said town, during the year ending on the date hereof, is days, and the amount thereof performed is days, as appears by the account rendered to us by the several overseers of highways in said town.

2. The said commissioners have received for fines and commutations, received under the statute relative to highways, the sum of dollars, to wit:

Date.	From whom Received.	On what Account.	Amount.

3. The improvements which have been made on the roads and bridges in said town, during the year immediately preceding the date of this report are as follows: (*Here specify the improvements.*) And the roads and bridges in said town are (*here give the state of them, and specify whether they are in good repair or otherwise.*)

4. The following improvements are necessary to be made on the roads and bridges in said town, viz: (*Here specify the improvements deemed necessary.*)

5. And the expense of making such improvements, beyond what the labor to be assessed this year will accomplish, is by us estimated at \$.

Given under our hands, this day of , 18 . .

G. R.,)
D. V., } *Commissioners.*
T. G., }

[No. 125.]

Statement and estimate to be delivered by the commissioners of highways to the supervisor.

To the Supervisor of the town of :

The following improvements, &c. (*As in the 4th and 5th clauses of their annual account rendered to town auditors.*)

[No. 126.]

Complaint to the commissioners of highways, against an overseer, for neglect of duty.

To the Commissioners of Highways of the town of :

The complaint of A. B., a resident of the town of , aforesaid, respectfully sheweth. that X. Y., the overseer of highways for road district number , in said town, has neglected and refused to warn the following persons, to wit: G. H., J. K., and L. M., to work on the highways in said district, after having been required to do so by the commissioners, or one of them. And the said A. B. hereby requires the commissioners of highways aforesaid, to prosecute the said X. Y. for the said offence.

Dated the day of , 18 .

A. B.

[No. 127.]

Security to be given by complainant to commissioners, to indemnify them against the costs in prosecuting the complaint against overseer.

We, A. B. and E. F., acknowledge ourselves indebted to the commissioners of highways of the town of , in the sum of \$, which we jointly and severally bind ourselves to pay.

Dated the day of , 18 .

The condition of this obligation is such, that if the said A. B. doth well and truly indemnify the said commissioners of highways, against the costs which may be incurred in prosecuting X. Y., the overseer of highways for road district number , for the penalty incurred by the said X. Y., in the refusal or neglect set forth in the annexed complaint, then this obligation to be void, otherwise of force.

C. D., [L. S.]

E. F., [L. S.]

[No. 128.]

Application to commissioners to lay out a new road through unimproved land, or through improved land with the consent of the owner.

To the Commissioners of Highways of the town of , in the county of :

The undersigned, a person liable to be assessed for highway labor in said town, and residing therein, doth hereby make application to you to lay out a new road of the width of three rods, through land not enclosed, improved, or cultivated, (or through lands not enclosed, improved, or cultivated, excepting as to lands of P. Q., who consents to the laying out of said road, and has signified the same by signing this petition,) beginning at, &c. (*describing the road by courses and distances, or such objects and boundaries as may make the route sufficiently definite and certain.*)

[No. 129.]

Order of commissioners to lay out a highway through lands not enclosed, improved, or cultivated, excepting in part, and by the consent of the owner of that part.

At a meeting of the commissioners of highways of the town of , in the county of , at , in said town, on the day of , all the said commissioners having met and deliberated on the subject embraced in this order, (*or if but two of the commissioners met, say, all the said commissioners having been duly notified to attend the said meeting for the purpose of deliberating upon the subject matter of this order,*) it is ordered and determined by the said commissioners, that a highway be laid out in the said town of the width of four rods, on the application of A. B., and by the consent of P. Q., through whose

improved land the said highway is to pass for a part of the distance; the residue of said highway being through lands not enclosed, improved, or cultivated. And the said commissioners have caused a survey thereof to be made as follows: The centre line of the said highway is to begin at , and to run thence, &c. (*here insert the survey.*)

In witness whereof, the undersigned, commissioners of highways of said town, have hereunto subscribed their names, this day of , 18 .

B. D., }
H. S., } *Commissioners.*
U. N., }

[No. 130.]

Application to alter a road, where the alteration passes through land not improved, enclosed, or cultivated, or through improved land, by the consent of the owner.

To the Commissioners of Highways of the town of , in the county of :

We, the undersigned, E. D. and F. G., residents of said town, and liable to be assessed for highway labor therein, do hereby make application to you, the said commissioners, to alter the highway leading from the house of G. H. to the house of P. Q., in said town, as follows: (*Insert a description of the proposed alteration by courses and distances, or by objects and boundaries, so as to render it sufficiently certain and definite.*) The proposed alteration passes through lands which are not improved, enclosed, or cultivated (*or, passes through the land of E. D. and F. G., who consent thereto.*)

Dated the day of , 18 .

E. D.
F. G.

[No. 131.]

Order of the commissioners to alter a highway.

At a meeting of the commissioners of highways of the town of , in the county of , at , in the said town, on the day of , all the said commissioners having met and deliberated on the subject embraced in this order (*or if but two of the commissioners met, say, all the said commissioners having been duly notified to attend the said meeting,*

for the purpose of deliberating on the subject matter of this order); it is ordered and determined by the said commissioners, upon the application and by the consent of O. B. and J. S., through whose lands the alteration hereafter described is to be made, that the highway leading from the house of G. H. to the house of P. Q., in said town, be altered according to the following survey, which the commissioners have caused to be made thereof, as follows, to wit: The centre line of the alteration is to begin at the centre of the present highway, opposite the northerly corner of the barn of the said O. B., and to run thence (*here include the whole survey*), and that the said alteration be of the width of rods.

In witness whereof, the commissioners of highways of said town have hereto subscribed their names, this day of , 18 .

S. B., }
D. V., } *Commissioners.*
T. G., }

[No. 132.]

Application to lay out a highway through improved land, without the consent of the owner.

To the Commissioners of Highways of the town of , in the county of :

The undersigned, resident of the said town, and liable to be assessed for highway labor therein, hereby makes application to you, the said commissioners, to lay out a highway in said town, commencing at, &c. (*here insert a description by courses and distances, or by objects and boundaries, so as to render the proposed route sufficiently certain and definite*), which said highway will pass through the improved (*or, enclosed, or, cultivated*) lands of P. Q. and R. S., who do not consent to the laying out of the same.?

Dated the day of , 18 .

N. M.

[No. 133.]

Notice of application, and of the meeting of freeholders, when the intended highway is through improved or cultivated lands.

Notice is hereby given, that the undersigned has made application to the commissioners of highways of the town of , in the county of , for the laying out of a highway, com-

mencing, &c. (*insert description as in the application*), and which highway will pass through a lot of improved meadow land of J. M., and a lot of improved pasture land of J. S. And that on the day of , at o'clock in the noon, at , in said town, twelve freeholders, duly qualified for that purpose, will meet to examine the ground, and to certify with respect to the necessity and propriety of such highway.

Dated at , this day of , 18 .
F. H.

[No. 134.]

Affidavit of affixing the notice of application.

County, ss.

H. P., of , in said county, being duly sworn, says, that he posted up notices in writing, of which the within is a copy, at (*here insert the names of three prominent public places, where the notices were posted,*) three of the most public places in said town, on the day of , being six days before the time specified therein for the meeting of the freeholders.

Subscribed and sworn before me, } H. P.
this day of , 18 . }

J. K., *Justice of the Peace.*

[No. 135.]

Oath of freeholders.

You, and each of you, do solemnly swear, that you will well and truly examine and certify, in regard to the necessity and propriety of the highway applied for through the land of A. B., C. D., and others.

[No. 136.]

Certificate of freeholders, with copy notice, and the affidavit of posting of notice, attached.

Town of County, } ss.

We, the undersigned, twelve reputable freeholders of the said town, not interested in the lands through which the road described in the annexed notice is to be laid, nor of kin to any owner thereof, having appeared at the time and place specified in said notice, and having been duly sworn, well and truly to examine and certify in

regard to the necessity and propriety of the highway applied for; and having proceeded to and personally examined the route of such highway, and heard all reasons that were offered for and against laying out the same, do hereby certify that we are of opinion, that the highway applied for, and described in the annexed notice, is necessary and proper.

In witness whereof, we have hereto subscribed our names, this
day of , in the year 18 .

R. H., &c. &c.

[The affidavit of the posting of the notice ought to be annexed, with the notice, to the certificate of the freeholders, and to go into the hands of the commissioners, who are not bound to act on the application, by laying out the road, until the proof of the posting of the notice shall have been made.]

[No. 137.]

Notice to be given by the commissioners to the occupant of land through which the road is to run.

To W. D.

You will take notice, that on the day of , at o'clock in the noon, at the house of X. Y. Z., in the town of , we, the undersigned, commissioners of highways of the town of , and county of , will meet to decide on the application of A. B., for the laying out, &c. (*as in application,*) twelve qualified freeholders having, pursuant to the provisions of the statute, certified that the road is necessary and proper.

Dated the day of , 18 .

Yours, &c.

C. H.,
D. J., } *Commissioners.*
T. D., }

[No. 138.]

Certificate by the commissioners of laying out a road through improved land.

At a meeting of the commissioners of highways of the town of , in the county of , at , in the said town, on the day of , all the said commissioners having met and deliberated on the subject matter of this order, (*or if but two of the commissioners met, say,* all the said commission-

ers having been duly notified to attend the said meeting for the purpose of deliberating on the subject matter of this order,) upon the application of A. B. a resident in said town, and liable to be assessed to work on the highways therein, for the laying out of the highway hereafter described, and on the certificate of twelve reputable freeholders of said town, convened and duly sworn after due public notice, as required by the statute, certifying that such highway is necessary and proper; and notice in writing of at least three days having been given in due form of law to P. Q. and R. S., occupants of the lands through which the highway hereafter described is to run, that the undersigned commissioners would meet at this time and place, to decide on the application aforesaid, and the undersigned having heard all reasons offered for and against laying out such highway, it is ordered, determined, and certified, that a public highway shall be, and the same is hereby laid out pursuant to said application, whereof a survey hath been made, and is as follows, to wit: Beginning, &c. (*as in the survey*,) and the line of the said survey is to be the centre of said highway, which is to be rods in width.

In witness whereof, the said commissioners of highways have hereto subscribed their names, this day of , 18 .

C. H.,)
D. J., } *Commissioners.*
T. D., }

[No. 139.]

Order of commissioners, refusing to lay out or alter a highway.

At a meeting of the commissioners of highways of the town of , in the county of , at , in the said town, on the day of , all the said commissioners having met and deliberated on the subject matter of this order, (*or if but two of the commissioners met, say*, all the said commissioners having been duly notified to attend the said meeting for the purpose of deliberating on the subject matter of this order:) It is hereby ordered and determined, that the application of A. B., dated the day of , for the laying out (*or altering*) of the highway therein mentioned, be, and the same hereby is denied and refused.

In witness whereof, we have hereto subscribed our names, this
day of , 18 .

C. H., }
H. J., } *Commissioners.*
T. D., }

[No. 140.]

Agreement as to damages.

It is hereby agreed between the commissioners of highways of the town of , of the one part, and P. Q. of the other part, that the damages sustained by the said P. Q., by reason of the laying out and opening of a highway through the lands of the said P. Q., on the application of A. B. and others, by order of the commissioners, dated the day of , be fixed and liquidated at the sum of \$.

Witness our hands, this day of , 18 .

P. Q.
C. H., }
D. J., } *Commissioners.*
T. D., }

[No. 141.]

Release of damages by the owner of the land.

I do hereby release to the town of , all claim to damages by reason of the laying out and opening of a highway through my lands, by order of the commissioners of highways, dated the day of .

In witness whereof, I have hereto set my hand and seal, this
day of , 18 .

P. Q. [L. S.]

[No. 141, A.]

Order ascertaining and describing an old highway.

At a meeting of the commissioners of highways of the town of , in the county of , at in said town, on the day of , 18 , all the said commissioners (*state the meeting of the commissioners as in the preceding forms*;) it appearing to the said commissioners, that the road in said town, used as a highway, leading from to , has been laid out, but not sufficiently described; (*or, it appearing to the said commissioners that the road in said town leading*

from to , has been used as a public highway for twenty years, but has not been recorded :) It is therefore ordered by the said commissioners, that the said road be ascertained, described, and entered of record. And the said commissioners having caused a survey of the said road to be made, do further order that the description, courses, and distances of the said road, according to the said survey, be as follows, beginning (*insert survey.*) And it is further ordered that the line above described be the centre (*or, the south line &c.*) of the said road, and that the said road be of the width of rods. In witness whereof the said commissioners have hereunto subscribed their names, the day of 18 .

A. B.,)
D. F.,) *Commissioners.*
H. G.,)

[No. 142.]

Appeal to the county judge from the determination of highway commissioners.

To the Hon. X. Y., County Judge of the county of :

The undersigned, conceiving himself aggrieved by the order and determination of A. B., C. D., and E. F., commissioners of highways of the town of , in said county, made on the day of , 18 , and filed in the town clerk's office of said town, altering (*or, refusing to alter, or, laying out, or, refusing to lay out, discontinuing, as the case may be*) a highway in said town, which order was made pursuant to the application of J. D., hereby appeals to you from such determination.

The order hereby appealed from was filed and recorded in the town clerk's office, on the day of , 18 , a copy whereof is hereto annexed.

(*To avoid mistakes, it is recommended to annex to the notice of appeal a copy of the order appealed from.*)

The grounds upon which this appeal is based are as follows : (*here state the grounds of appeal.*) This appeal is brought to reverse entirely the determination of said commissioners, (*or if a part, state what part.*)

Dated , 18 .

W. V.

[No. 143.]

Appointment of referees by county judge to hear appeal.

On the day of , 18 , W. V., of the town of , appealed to me from the order of A. B., highway commissioner of the town of , which order was filed and recorded in the town clerk's office of the town of , on the day of , 18 , and is as follows :

(Here insert a copy of the order.)

Now, therefore, I do hereby appoint F. H., S. P. and O. R., residents of the said county of , but not of the town of , referees to hear and determine said appeal.

Given under my hand, this day of , 18 .

X. Y., *County Judge.*

[No. 144.]

Notice to the referees of their appointment.

To F. H., S. P., and O. R.

Take notice, that you have been appointed by me referees to hear and determine an appeal made by W. V. from the order and determination of A. B., commissioner of highways of the town of , in the county of , contained in his order, filed and recorded in the office of the town clerk of said town of , on the day of 18 , as follows : *(here insert description.)* And that the papers herewith delivered to you are the papers pertaining to the appeal referred to you.

Dated the day of , 18 .

X. Y.,
County Judge.

[No. 145.]

Notice to be given by the referees to the commissioner.

To A. B., Commissioner of Highways of the town of , in the county of :

The undersigned having been duly appointed referees to hear and determine an appeal made to X. Y., county judge of the county of , by G. H., of said town of , from your determination embraced in your order, made on the day of , 18 , and filed and recorded in the office of the town clerk of said town, on the day of , 18 , refusing to lay out, &c., *(as in the appeal ;)* you will therefore take

notice that we shall attend at the house of C. D., in said town, on the day of , at o'clock in the noon of that day, to hear and determine such appeal.

½ Dated the day of , 18 .

J. D., }
P. K., } *Referees.*
N. R., }

[No. 146.]

Referee's subpoena on an appeal.

County, ss :

To Q. R., T. S., and P. V., Greeting :

You, and each of you, are hereby required to appear before us, at , in the town of , in said county, on the day of , 18 , at o'clock in the noon of that day, to testify and give evidence in the matter of an appeal made by G. H., from a determination of B. C., commissioner of highways of the said town of , on the part of the said commissioner, (or, appellant, as the case may be.)

Given under our hands, this day of , 18 .

J. D., }
P. K., } *Referees.*
N. R., }

[No. 147.]

Decision of the referees upon an order respecting the altering or discontinuing a road.

County, ss :

On the day of , A. D., 18 , G. H., of the town of , appealed to the Hon. X. Y., county judge of said county, from the order and determination of B. C., commissioner (or, B. C., L. M., and S. T., commissioners) of highways of said town of , contained in his (or their) order, filed and recorded in the office of the town clerk of said town of , on the day of , 18 , as follows: (*insert the description*;) copies of which said appeal and order are hereto annexed; and we, the undersigned, having been duly appointed by said county judge, referees to hear and determine the said appeal, convened and attended at , in the said town of , on this day of , 18 , at o'clock in the noon, in pursuance of notice duly given to the said commissioner (or com-

missioners) and to G. H., the applicant aforesaid, according to law, to hear the proofs and allegations of the parties. And having proceeded to have such hearing, had, we do hereby adjudge, and decide, that the order and determination of the said commissioner (or commissioners) † be, and the same is in all things affirmed; (or, reversed; or, reversed in part, as follows: *give the decision in full.*)

Given under our hands, this day of , 18 .

J. D., }
P. K., } *Referees.*
N. R., }

[No. 148.]

Decision of the referees on an order refusing to lay out a road.

County, ss.

On the day of , 18 , &c., (*as in form No. 147 to the †, and then add:*) be, and the same is in all things reversed, and that a highway be laid out and established pursuant to the application of the said G. H. And we do further order that the said highway be of the width of rods.

Given under our hands, this day of , 18 .

J. D., }
P. K., } *Referees.*
N. R., }

[No. 149.]

Order of commissioners after a decision by referees reversing a former order in part.

County, }
Town of , } ss.

An appeal having been made by G. H., to the Hon. X. Y., county judge of said county of , from the order and determination of the undersigned commissioners (or commissioner) of highways of said town of , made on the day of , 18 , which order was filed and recorded in the town clerk's office of said town, on the day of , of which the following is a copy, (*here insert a copy of the original order.*) J. D., P. K., and N. R., were appointed referees, to hear and decide the said appeal; and upon such hearing, the following decision was made by the said referees, viz; (*here insert a copy of the decision.*)

Now, therefore, in pursuance of such decision, we, the said commissioners, (*or*, I, the said commissioner,) do hereby order, adjudge and determine, &c., (*proceed as in an original order.*)

In witness whereof, we, the said commissioners, (or, I, the said commissioner,) have hereunto subscribed our names, (or, my name) this day of 18 .

B. C., *Commissioner of Highways*
of the town of _____, or

B. C., } *Commissioners of Highways*
L. M., } *of the town of* .
S. T., }

[No. 150.]

Order of commissioners after a final decision, when they had originally refused to alter, discontinue, or lay out a road.

Town of _____ County, } ss.

In obedience to the statute and in compliance with a decision of J. D., P. K. and N. R., referees heretofore appointed by the Hon. X. Y., county judge of said county of _____, a copy whereof is hereunto annexed: I, the commissioner (or, we, the commissioners) of highways of said town of _____, do hereby order and determine, &c. (*proceed in the same manner as in an original order, and annex a copy of the decision of the referees.*)

In witness, &c. (as in form No. 149.)

[No. 151.]

*Application by a commissioner of highways to the county court,
to appoint commissioners to assess damages.*

To the County Court for the county of

I, the undersigned, commissioner, (*or*, B. C., L. M., and S. T., commissioners) of highways in and for the town of _____, in said county, hereby make application to the county court of said county, in pursuance of law, for the appointment of commissioners to assess the damages for laying out (*or*, discontinuing, *or*, altering) the highway in said town, commencing at the house of A. B., and terminating at _____; the said highway having been laid out upon that route (*or*, discontinued; *or*, altered) by virtue of an order made by the undersigned, on the _____ day of _____, 18 ____.

of which the following is a copy. (Here insert a copy of the order in full.) Dated the day of , 18 .

B. C., Commissioner of Highways
of the town, of _____, or

B. C., } *Commissioners of Highways*
L. M., } *of the town of* .
S. T., }

[No. 152.]

Appointment of commissioners.

At a county court, held in and for the county of _____, at
the court rooms in _____, in said county, on the _____ day of
_____, A. D., 18 _____. Present Hon. X. Y., County Judge:

On reading and filing the application of B. C., commissioner, (or, B. C., L. M., and S. T.,) commissioners of highways for the town of _____, in said county of _____, asking for the appointment of commissioners to assess the damages for laying out (discontinuing; or, altering) the highway, (describe it at length, as in the application.)

Ordered, That N. M., D. B., and H. A., be, and they are hereby, appointed commissioners to assess the damages for laying out, (discontinuing, or, altering) the said highway.

E. M. H., Clerk of the County Court
of county.

[No. 153.]

Notice to the commissioners of their appointment.

To N. M., D. B., and H. A. :

Please to take notice that you have been duly appointed by the county court of the county of _____, by an order, a copy whereof is hereto annexed, commissioner to assess the damages for laying out, (discontinuing, *or*, altering) the highway, (*describe the highway*), and that you are required to meet the undersigned, commissioner at _____, in the town of _____, in said county, on the _____ day of _____, instant, at _____ o'clock, in the noon, to view the premises, and hear and determine the matter there to be submitted.

Dated the day of , 18 .

B. C., *Commissioner of Highways*
of the town of , or

B. C., }
L. M., } *Commissioners of Highways*
S. T., } of the town of .

[No. 154.]

Oath of commissioners to assess damages.

[This will be the constitutional oath; the person administering the oath will recite the duties of the person taking the oath, as they are mentioned in the application for the highway.]

[No. 115.]

Assessment of damages by commissioners.

County, ss :

The subscribers, having been appointed commissioners by the county court of county, to assess the damages sustained by G. H., by reason of the laying out (*or*, the altering, *or*, discontinuing) of the highway (*describe the highway*), which highway was laid out (*altered, or, discontinued*), in pursuance of the order of the commissioners of highways of the town of , bearing date the day of , 18 , after having taken the constitutional oath, and viewed and examined the premises, and heard the parties and their witnesses, do adjudge, determine, and assess the damages of the said G. H., at dollars. (*If damages are to be awarded to others, so state.*)

In witness whereof we have hereunto set our names, this day of , A. D., 18 .

N. M., }
D. B., } *Commissioners.*
H. A., }

[No. 156.]

Notice of re-assessment by a jury.

Sir—You will please take notice that I consider myself aggrieved by* the assessment of damages made on the day of , 18 , by N. M., D. B., and H. A., commissioners appointed to make an assessment of damages by the county court of

* If the notice is given by the commissioner, he will use the words "dissatisfied with," in the place of the words "aggrieved by."

county, for laying out (*or, altering, or, discontinuing*) the road (*here insert a description of the same*), (the assessment being on file in your office,) and I hereby request a jury to re-assess the said damages. I request that such jury be drawn by D. W., town clerk of the town of (*name some adjoining town*), at his office in said town, on the day of , instant, at o'clock in the noon.

Dated the day of , 18 .

G. H., (*or*,
B. C., *Commissioner of Highways*
of the town of .

To O. L., *Town Clerk of the town of* .

[No. 157.]

Notice to the town clerk of the adjoining town to draw a jury.

Sir—You are hereby required to draw a jury, to consist of twelve jurors, on day of instant, at o'clock in the noon of that day, for the purpose of re-assessing the damages for laying out (*or, altering, or, discontinuing*) the highway (*insert a description of the highway*); the said damages having been assessed by N. M., D. B., and H. A., commissioners appointed for that purpose. This request is made on the ground that I am aggrieved by such assessment of damages (*or, I being dissatisfied with the assessment of the said commissioners if made by a highway commissioner*).

Dated the day of , 18 .

G. H., (*or*,
B. C., *Commissioner of Highways*
of the town of .)

To D. W., *Town Clerk of the town of* .

[No. 158.]

Justice's summons for a jury.

Town of County, } ss.

To any constable of the town of in said county, Greeting :

You are hereby commanded, in the name of the people of the State of New-York, to summon (*insert the names of all the jurors drawn*) jurors regularly drawn by D. W., town clerk of the town of , to re-assess the damages for laying out (*or, altering*

or discontinuing) the highway (*describe the same*) to meet at
 , in the town of , on the day of
 o'clock in the noon, for the purpose aforesaid. And
 have you then and there this precept, with your return thereupon,
 as by law required.

Given under my hand, this day of , 18 .

S. C., *Justice of the Peace.*

[No. 159.]

Certificate of the town clerk of the drawing of the jury.

Town of County, } ss.

I hereby certify that upon the application of G. H., (*or*, B. C.,
 commissioner of highways of the town of ;) and in ac-
 cordance with law, on the day of , 18 , at
 o'clock in the noon, at my office in the town of ,
 (*here insert the names of all the jurors drawn*) were drawn by me
 as jurors, to re-assess the damages occasioned by laying out (*or*,
 altering ; *or*, discontinuing) the highway (*insert description of the*
same,) the damages having been assessed by N. M., D. B., and
 H. A., commissioners for that purpose, but the said G. H. con-
 ceiving himself aggrieved by (*or*, the said B. C., commissioner of
 highways being dissatisfied with) the decision and assessment of
 the said commissioners.

Given under my hand, this day of , 18 .

D. W., *Town Clerk of the town of*

[No. 160.]

Verdict of jury re-assessing damages.

Town of County, } ss.

We, the undersigned, freeholders of said county, neither resi-
 dents of , nor of kin to G. H., nor in any manner inte-
 rested in the lands through which the road hereinafter mentioned is
 located, being the jury drawn, summoned and sworn to re-assess
 the damages sustained by the said G. H., by reason of the laying
 out (*or*, altering, *or*, discontinuing,) of the highway, (*describe the*
highway,) in pursuance of the order of the commissioners of high-
 ways of the town of , bearing date the day of
 18 , after having viewed and examined the premises, and heard

the parties, and such witnesses as were examined before us, do hereby re-assess the damages of the said G. H., sustained by him by reason of the said laying out (*or, altering, or, discontinuing*) of the highway aforesaid, at dollars; (*if other persons are interested in the damages, state the amount re-assessed to each.*)

In witness whereof, we have hereunto set our hands, this day of , 18 .

A. B., }
C. D., } *Jurors.*
E. F., }
&c. &c. }

[No. 161.]

Certificate of justice to the verdict of jury

Town of County, } ss.

I, S. C., a justice of the peace of said town, do hereby certify that the above is the verdict of the jury summoned in pursuance of a summons issued by me, and drawn and sworn by me to re-assess the damages sustained by G. H., by the laying out (*or, altering, or, discontinuing*) of the highway mentioned in the said verdict.

Given under my hand this day of , 18 .

S. C., *Justice of the Peace.*

[No. 162.]

Order ascertaining and describing an old highway.

At a meeting of the commissioners of the town of in the county of , held in the said town, at the house of , on the day of , all the said commissioners having met and deliberated on the subject of this order, (*or if but two of the commissioners met, say, all the said commissioners having been duly notified to attend the said meeting for the purpose of deliberating on the subject of this order*), it appearing to the said commissioners that the road in said town, used as a highway, leading from to , has been laid out, but not sufficiently described of record (*or, has been used as a public highway for twenty years, but has not been recorded*), it is ordered by the said commissioners, that the said road be ascertained, described and entered of record. And the said commissioners do further

order, that the description, courses, and distances of said road, be according to a survey which they have caused to be made of the same, as follows: (*insert survey*), and that the line of said survey be the center of said road, and said road be of the width of rods.

In witness whereof, we have hereunto placed our hands, this day of , 18 .

J. C., }
H. D., } *Commissioners.*
T. J., }

[No. 163.]

Determination upon a subject of disagreement between the commissioners of two towns, relating to a road extending into both their towns.

At a joint meeting of the commissioners of highways of the town of , in the county of , and the commissioners of highways of the town of , in the same county, held at on the day of , upon the request of the said commissioners of highways for the town of , for the purpose of making a determination upon the subject of a disagreement between the said commissioners of the said towns relative to the laying out (*or* alteration of) a road hereinafter described, and extending into both the said towns, have made their determination upon the subject of the said disagreement, and do hereby determine, that the said road be laid out (*or* altered) as follows, to wit : (*here set forth the manner in which the dispute is adjusted and settled.*)

In witness whereof, we have hereto subscribed our names, this day of , 18 .

J. C., }
H. D., } *Commissioners of Highways*
T. J., } *of the town of .*
L. M., }
M. N., } *Commissioners of Highways*
P. Q., } *of the town of .*

[No. 164.]

Order of commissioners for laying out a highway on the line between two towns.

At a meeting of the commissioners of highways of the towns of , and , in the county of , in

the said town of _____, on the _____ day of _____, for the purpose of laying out a highway upon a line between the said towns, two of the commissioners of each of the said towns being present, It is ordered and determined by the said commissioners, that a highway be laid out upon the line between the said towns, or as near thereto as the convenience of the ground will admit, according to a survey thereof which the said commissioners have caused to be made as follows: (*insert survey*;) and that the said line as above described be the centre of the said highway, and that the said highway be of the width of _____ rods. And it is further ordered, that the said highway be divided into two road districts, as follows: that part thereof from _____ to _____ shall be one of the said road districts, and shall be allotted to the said town of _____; and the residue of the said highway shall be the other of the said road districts, and shall be allotted to the said town of _____.

In witness whereof, the said commissioners have hereto subscribed their names, the _____ day of _____, 18 ____.

J. C., } *Commissioners of Highways*
 H. D., } *of the town of _____.*
 L. M., } *Commissioners of Highways*
 M. N., } *of the town of _____.*

[No. 165.]

Notice to the town clerk of application for a private road.

To D. N., Town Clerk of the town of _____:

Please take notice that an application has been made to me (*or, us*) by R. H., to lay out a private road in said town, for his use, commencing, &c., (*describe the road at length by metes and bounds, as in the application*), and passing through the lands of P. Q., and that I hereby request you to draw a jury, in accordance with law, on the _____ day of _____ instant, at _____ o'clock in the noon of that day, to determine the necessity of such road, and assess the amount of damage to be sustained by the opening of the same.

Dated this _____ day of _____, 18 ____.

B. C., *Commissioner of Highways*
of the town of _____, (or

B. C., } *Commissioners of Highways*
 L. M., } *of the town of _____.)*
 S. T., }

[No. 166.]

Notice to persons interested that a jury will be drawn.

To B. S. :

You are hereby notified that a jury will be drawn by D. N., town clerk of the town of _____, at his office in said town, on the _____ day of _____, instant, at _____ o'clock in the noon, to determine the necessity of laying out a private road through the land of P. Q., in said town, and the damage incident thereto, commencing at, &c., (*insert the description of the road*), upon the application of R. H., made to us.

Dated the _____ day of _____, 18 ____.

B. C., }
L. M., } *Commissioners of Highways*
S. T., } *of the town of _____*

[No. 167.]

Certificate of the drawing of the jury for a private road.

Town of _____
County, } ss.

I hereby certify, that, in pursuance of a notice of the commissioners of highways of the town of _____, requiring a jury to be drawn, agreeably to the provisions of the statute, to determine the necessity of laying out a private road, and the amount of damage occasioned by the opening of the same through the land of P. Q., in said town, commencing at, &c. (*describe the road*), upon the application of R. H., made to the said commissioners, on the _____ day of _____, 18 ____, at _____ o'clock in the _____ noon, at my office, (*here insert the names of the jurors drawn*) were severally drawn by me as jurors to determine the necessity of said private road, and the amount of damage to be sustained by the opening thereof.

Given under my hand, this _____ day of _____, 18 ____.

D. N., *Town Clerk*
town of _____.

[No. 168.]

Justice's summons to summon jury to determine the propriety of laying out a private road.

Town of _____
County, } ss.

To any constable of the town of _____, in said county, Greeting :

You are hereby commanded, in the name of the people of the

State of New-York, to summon (*insert the names of all the jurors drawn*) jurors regularly drawn in accordance with law, by the town clerk of the said town of _____, to meet at _____ in said town, on the _____ day of _____ instant, at _____ o'clock in the _____ noon, to determine the necessity of laying out a private road through the land of P. Q., and the amount of damage sustained by the opening of the same; the road to commence at, and passing through the lands of, &c., (*give description of the road.*) And have you then and there this precept, with your return thereupon, as by law required.

Given under my hand, this _____ day of _____, 18 ____.
S. C., *Justice of the Peace.*

[No. 169.]

Verdict of the jury in reference to laying out a private road.

We, the undersigned, disinterested freeholders of the town of _____, in the county of _____, having been drawn, summoned, and sworn, well and truly to determine the necessity of laying out a private road, upon the application of R. H., to the Commissioners of Highways of the town of _____, bearing date the _____ day of _____, 18 __, through the land of P. Q., commencing at &c., (*give description of the road*) and also to determine the amount of damage to be sustained by the opening thereof, having viewed the premises, and heard the allegations of the parties and their witnesses, do hereby determine that it is necessary and proper to lay out and establish such private road. And we further certify that the amount of damage occasioned to P. Q., by the opening thereof, is _____ dollars. In witness whereof, we have hereunto set our hands, this _____ day of _____, 18 ____.

A. B.,
C. D.,
E. F.,
&c. &c. } *Jurors.*

[No. 170.]

Certificate of the justice to the verdict of the jury.

Town of _____, }
County, } ss. _____.

It is hereby certified by me, the undersigned, one of the justices of the peace of said town, that the above is the verdict of the jury

summoned by a summons issued by me, and drawn and sworn by me, to determine the necessity of laying out the private road mentioned in said verdict, and the amount of damage to be sustained by the opening of the same.

Given under my hand, this day of , 18 .
S. C., *Justice of the Peace.*

[No. 171.]

Order for laying out a private road.

Town of County, } ss.

At a meeting of the commissioners of highways of the town of , aforesaid, on the day of , all the said commissioners having met and deliberated on the subject of this order, (*or if but two of the commissioners met, say,*) all the said commissioners having been duly notified to attend the said meeting, for the purpose of deliberating on the subject of this order,) upon the application of R. H., for the laying out of the private road hereafter described, and on the verdict of six jurors of said town, drawn, summoned, and sworn, after due notice had been given to the persons interested in the lands through which said road is to pass, as required by law, determining that such road was necessary, and the amount of damage to be sustained by the opening of the same : It is therefore ordered and determined by the said commissioners, that a private road be laid out for the use of the said R. H., pursuant to his application, the courses and distances whereof, according to a survey thereof which the said commissioners have caused to be made, are as follows : (*Insert the survey at length.*) And it is further ordered and determined, that the line above described be the center of said road, and that said road be of the width of rods.

In witness whereof, we have hereunto subscribed our hands, this
day of 18 .

B. C., }
L. M., } *Commissioners.*
S. T., }

[No. 172.]

Application for discontinuance of an old road.

To the Commissioners of Highways of the town of , in
the county of :

The undersigned, a resident of said town, liable to be assessed for highway labor, hereby makes application to you for the discontinuance of the old road in said town, commencing, &c. (*describe the road*), on the ground of its having become useless and unnecessary.

Dated the day of , 18 .

A. B.

[No. 172, A.]

Oath of freeholders, upon application for the discontinuance of a road.

You, and each of you, do swear, that you will well and truly examine and certify in regard to the propriety of the discontinuance of the road for which A. B. has made application.

[No. 173.]

Certificate of freeholders upon application for the discontinuance of an old road.

We, the undersigned, disinterested freeholders of the town of , having met at , on this day of , in pursuance of the summons of the commissioners of highways of said town, in order to examine and certify in regard to the propriety of discontinuing the road described in the annexed application, and after being duly sworn, and having viewed said road, do certify that the same is in our opinion useless and unnecessary.

In witness whereof we have hereunto subscribed our names, this day of , 18 .

P. R.

S. T., &c.

[No. 174.]

Order of commissioners for discontinuing a road.

At a meeting of the commissioners of highways of the town of , in the county of , at , in said town, on the day of , 18 , all the said commissioners having met and deliberated on the subject of this order, (*or if but two of the commissioners met, say, all the said commissioners having been duly notified to attend the said meeting, for the purpose of deliberating on the subject of this order,*) upon the application of A. B., of said town, for the discontinuance of the road hereinafter described, and on the certificate of twelve disinterested freeholders duly summoned and sworn, who have in due form certified

that said road is useless and unnecessary, and the said commissioners having caused a survey of said road to be made as follows, to wit: (*Here insert the survey.*) It is ordered and determined by the said commissioners, that the said road be, and the same hereby is discontinued.

In witness whereof, we have hereto subscribed our names, this
day of , 18 .

J. C., }
H. D., } *Commissioners.*
T. J., }

[No. 175.]

Notice to the occupant of the land for the removal of his fences.

To Mr. E. F. :

Please to take notice, that we, the commissioners of highways of the town of , having by an order duly made and filed with the town clerk, bearing date the day of , laid out a public highway through your enclosed lands, do hereby require you to remove your fences from within the bounds of said highway within sixty days after the service of this notice. Dated the day of , in the year 18 .

Yours, &c., .

J. C., }
H. D., } *Commissioners.*
T. J., }

[No. 176.]

Order of commissioners to remove fences in case of an encroachment on the highway.

We, the commissioners of highways of the town of in the county of , having ascertained that the public highway in said town leading from the house of , to the house of , is encroached upon on the easterly side thereof, along the lands in the occupation of W. X., by a stone fence erected by the present or former occupant thereof, which forms part of the enclosure of said land; and having caused the said highway to be surveyed, and having ascertained the easterly bounds and limits thereof to be upon, and according to the following line, to wit: Beginning, &c. (*here insert the survey of the line over which the encroachment is made,*) and that all that narrow piece of land which lies under and

between the said stone fence and the line above described, is a part of the public highway aforesaid :

It is therefore ordered by the commissioners of highways of said town, that the said stone fence be removed, so that the said highway be open and unobstructed, and of the breadth originally intended, which was rods.

Done at a meeting of the commissioners of highways of the said town of , on the day of , all of the said commissioners having met and deliberated on the subject of this order, (*or*, all the said commissioners having been notified to attend the said meeting, for the purpose of deliberating on the subject of this order.)

J. C., }
H. D., } *Commissioners.*
T. J., }

[No. 177.]

Notice to the occupant to remove the encroachment.

To Mr. W. X.

Take notice that an order of which a copy is hereto annexed, has been duly made by the Commissioners of Highways of the said town of , and you are required, according to the statute in such case made to remove the fence therein mentioned within sixty days after service of this notice. Dated the day of , in the year 18 .

J. C., }
H. D., } *Commissioners.*
T. J., }

[No. 178.]

Precept to summon a jury to inquire into the encroachment.

Town of County, } ss.

To any constable of said town, Greeting :

You are hereby commanded, in the name of the people of the State of New-York, to summon twelve freeholders of said town, to meet on the day of , instant, at o'clock in the noon, at , in said town, to inquire whether any encroachment has been made, and by whom, upon the highway in said town, leading from the house of to the house of , where it runs along the lands in the occupation of

W. X., in the said town, and give at least three days' notice to the commissioners of highways of said town, and to the said W. X., of the time and place at which the said freeholders are to meet.

Given under my hand, this day of , 18 .
A. R., *Justice of the Peace.*

[No. 179.]

Juror's oath on an inquiry concerning an encroachment.

You do swear, that you will well and truly inquire whether any encroachment has been made, and by whom, on the highway now in question.

[No. 180.]

Oath to a witness on an inquiry concerning an encroachment.

You do swear, that the evidence you shall give in relation to the encroachment on the highway now in question, shall be the truth, the whole truth and nothing but the truth.

[No. 181.]

Verdict of the jury, on an inquiry concerning an encroachment by fence.

The undersigned, freeholders of the town of , in the county of , summoned and assembled, and duly sworn as a jury, in pursuance of a precept dated the day of , issued by J. S., a justice of the peace of said town, on the application of the commissioners of highways thereof, or of one of them, to inquire whether any such encroachment on the public highway in said town, as is specified in an order of said commissioners, dated the day of , has been made, and by whom, and having heard the proofs and allegations produced and submitted, do *certify*, that such encroachment has been made by W. X., the present occupant, (or, by Y. Z., the former occupant.)

And for the purpose of specifying the particulars of such encroachment, the jurors aforesaid do find and certify, that the easterly bounds and limits of the said highway along the said encroachment, are as follows, to wit: Beginning, &c. (*here insert the survey, or a precise description of the line,*) and that the stone fence along the land in the occupation of the said W. X., and westerly of said line, is upon the said highway, and an encroachment thereon; and that the narrow piece of land, under and between the said stone fence and the aforesaid line, is a part of the said public highway.

Done and certified, this day of , in the year ,
as witness our hands. <

(If the Jury find that no encroachment has been made, the form will be like the preceding as far as the word "certify," and then as follows, to wit :)

That no such encroachment has been made on the public highway, and we have ascertained, and do certify, that the said W. X., the occupant of the land through (or by) which the said highway runs, has sustained damages by reason of the proceedings of the said commissioners against him to the sum of dollars.

[No. 182.]

Warrant to collect the costs of an inquiry concerning an encroachment.

The people of the State of New-York, to any constable of the town of , in the county of :

Whereas the commissioners of highways of the said town did, on the day of , last, make, reduce to writing, and sign an order for the removal of a certain fence as an encroachment upon the highway, running through (or by) the lands in said town in the occupation of W. X., specifying the breadth of the road, and the extent and place of the encroachment, according to the statute, which said encroachment being denied by said occupant, a jury of twelve freeholders was, upon the application of said commissioners, (or T. J., one of said commissioners,) by a precept issued by me, duly summoned to inquire into the premises, and the said jury being duly assembled and sworn, after due notice to the said occupant, as required by law, and having heard the allegations produced and submitted on the day of last, the said jury made and subscribed a certificate in writing, that an encroachment had been made by , the present (or former) occupant of said land, stating the particulars thereof. And whereas the costs of the said inquiry amount to the sum of dollars and cents, which remain unpaid: Therefore you are commanded to levy the said costs of the goods and chattels of the said W. X., the occupant of the said land through (or by) which the said highway runs, and bring the same before me without delay.

Given under my hand and seal, this day of , in the year .

A. R.,

Justice of the Peace. [L. S.]

[No. 183.]

Marriage certificate.

This is to certify, that on the day of , instant, G. H., of &c., and M. N., of &c., were lawfully joined together in holy matrimony, which was solemnized by me, in the presence of A. B., of &c., and E. L., of &c., attesting witnesses. And I further certify, that the said G. H., and M. N., are known to me (*or*, were satisfactorily proved, by the oath of W. F., known to me), to be the persons described in this certificate; that I ascertained, previous to the solemnization of such marriage, that the parties were of sufficient age to contract the same; and that, after due inquiry, there appeared no lawful impediment to such marriage.

Dated this day of , 18 .

J. K., *Justice of the Peace,*
(*or, Minister, &c.*)

A. B., }
E. L., } *Witnesses.*

[No. 184.]

Collector's notice.

Notice is hereby given to the taxable inhabitants of the town of (*or*, of the ward, in the city of ,) that I, the undersigned, collector of taxes in and for said town, (*or*, ward) have received the warrant for the collection of the taxes for the present year; and that I will attend at , in said town, on Tuesday of each week, for thirty days from the date hereof, from nine o'clock in the forenoon until four o'clock in the afternoon, for the purpose of receiving payment of taxes.

Dated , the day of , 18 .

A. B., *Collector.*

[No. 185.]

Commissioner's bond.

Know all men by these presents, that we, A. B., C. D., and E. F., of , are held and firmly bound unto G. H., supervisor of the town of , in the penal sum of one thousand dollars, to be paid to the said supervisor, or his successor in office. For which payment, well and truly to be made, we bind ourselves and our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the day of , in the year of our Lord one thousand eight hundred and .

The condition of this obligation is such, that if the above bounden A. B., who has been elected commissioner of highways of the town of , in the county of , shall faithfully discharge his duties as such commissioner; and within ten days after the expiration of his term of office, pay over to his successor or successors all moneys which may be remaining in his hands as such commissioner, and faithfully and truly account to such successor for all moneys received and paid out by him as such commissioner, without fraud or delay, then the preceding obligation to be void otherwise to remain in full force and virtue.

Sealed and delivered in presence of .

[No. 186.]

Notice of resignation of commissioner.

To A. B., C. D., and E. F., Esqs., Justices of the Peace of the town of .

I hereby tender my resignation of the office of commissioner of highways for the town of , for the following reasons:
(Give the reasons.) G. H.

Dated, &c.

[No. 187.]

Notice of application for additional appropriation of money for highway purposes.

To the public.

Notice is hereby given that the undersigned will apply at the next annual town meeting to be held in the town of , on the day of 18 , to the qualified voters of said town, to raise by vote the sum of , dollars, to be used in said town during the ensuing year, for the construction of roads and bridges therein.

Dated, , 18 .

Signed,

C. E. W.

[No. 187, A.]

Notice from the sheriff to the supervisor, or to an assessor of each town or ward in his county.

SIR :—

A general election is to be held on the day of Novem-

ber next, at which are to be elected the officers mentioned in the annexed copy of a notice from the secretary of state, of which notice is hereby given to enable you to notify the inspectors of election in each election district of your town (or, ward) to meet as required by law, to make the necessary arrangements for holding the said election.

A. B., Sheriff of the
county of .

[No. 188.]

Certificate to be given to a teacher by town superintendent.

I hereby certify that I have examined G. B., and do believe that he (or, she, as the case may be,) is well qualified in respect to moral character, learning and ability, to instruct a common school in this town for one year from the date hereof.

Given under my hand at this day of , 18 .

C. D.,

*Town Superintendent of Common
Schools of the town of .*

[No. 189.]

Instrument annulling teacher's certificate.

Having inquired into certain complaints against A. B., heretofore licensed as a teacher of common schools of said town, and being of opinion that he, the said A. B., does not possess the requisite qualifications as a teacher, in respect to moral character, (or, in respect to learning, or, in respect to ability in teaching, as the case may be,) and having given at least ten days' previous notice in writing to said teacher, and to the trustees of the district in which he is employed, of my intention so to do, I have annulled, and hereby do annul the said certificate and license so granted as aforesaid.

Given under my hand this day of , 18 .

C. D.,

*Town Superintendent of Common
Schools of the town of .*

[No. 190.]

Form of a resolution for the alteration of a district.

At a meeting of, &c.,

Resolved, That districts number one and number two, in the said

town be altered as follows, viz: by setting off the farms and parcels of land occupied by J. B., T. J. and W. R., from district number one, in which they have heretofore been included, to district number two, so that the east boundary of district number one shall hereafter be the easterly line of the farms and parcels of lands occupied by A., B., C., D., &c., and the westerly boundary of district number two shall be the westerly lines of the farms and parcels of land occupied by the said J. B., T. J., and W. R.; the said J. B., having consented to be set off as aforesaid. The written consent of the trustees of the said districts number one and two, having been presented to the town superintendent, is filed with the town clerk; (or, the consent of the trustees of the said districts respectively, or, of district No. 1, or 2, as the case may be, not having been given to the said alteration, it is ordered, that a notice in writing of such alteration, signed by the town superintendent, be served on some one of the trustees of each of the said districts, or, of district No. 1, or 2).

[No. 191.]

Form of a resolution creating a new district.

At a meeting, &c.,

Resolved, That a new school district be formed to consist of the present districts No. 1 and No. 2; (or, the present district No. 1, and a part of district No. 2; or, parts of districts No. 1 and No. 2, as the case may be,) which said new district shall be numbered and shall be bounded as follows: on the north by the north line of the town of ; on the east by the easterly line of the farms and lots of land now occupied by Q. R., S. T., &c.; on the south by the south line of lots No. 56, 57, and 58, as designated on the map of said town; and on the west by the westerly line of the farms and lots now occupied by A, B, C, D, &c.

The formation of the aforesaid district, involving an alteration of District No. 1 and No. 2, the consent of the trustees of the said districts to such alteration has been presented to the town superintendent, and filed with the town clerk. (Or, if such consent has not been given, the following entry should be made: The formation of the aforesaid district, involving an alteration of districts No. 1 and 2, and the consent of the trustees of district No. 1 to such alteration not having been given, it is ordered that a notice

in writing of the said alteration, signed by the town superintendent, be served on one of the trustees of the said district, by the town superintendent.)

[No. 192.]

Notice to trustees not giving their consent to an alteration of their district.

The trustees of district No. , in the town of , will take notice, that an order was made this day by the town superintendent of common schools of the said town, of which the following is a copy, by which certain alterations in the said district are made as will appear by the said order; and that such alterations will take effect after three months from the service of this notice. Dated, &c.

G. H., *Town Superintendent of Common
Schools of the town of*
(Here insert copy of order of town superintendent.)

[No. 193.]

Notice of first meeting in a district, to organize.

To W. X., a taxable inhabitant of district No. , in the town of

The town superintendent of common schools of the town of , having by an order, of which the following is a copy, formed a new district in the said town, to be numbered , consisting of the territory particularly specified in the said order; you are hereby required to notify every inhabitant of the said district qualified to vote at district meetings, to attend the first district meeting of the said district, which is hereby appointed to be held at the house of in the said town, on the day of next, at 6 o'clock in the afternoon, by reading this notice in the hearing of each such inhabitant, or in case of his absence from home, by leaving a copy of this notice, at least six days before the said time so appointed for the said meeting. Dated, &c.

A. B., *Town Superintendent of Common
Schools, of the town of*

[No. 194.]

Oath to be administered by inspectors of election to a person challenged.

“You do swear (*or, affirm, as the case may be,*) that you have been a citizen of the United States for ten days, and are now of the age of twenty-one years, that you have been an inhabitant of this State for one year next preceding this election, and for the last four months a resident of this county; that you have been for thirty days next preceding this election, a resident of this Assembly district, (*or, Senate, or, Congressional district, ward, town, village, or, city, as the case may be, naming any or all of the foregoing districts, ward, town, village or city from which the officer is to be chosen for whom said person offers to vote,*) that you are now a resident of this town, (*or, ward, as the case may be,*) and of the election district in which you now offer to vote; and that you have not made any bet or wager, and are not directly or indirectly interested in any bet or wager depending upon the result of this election, and that you have not voted at this election.”

[No. 195.]

Form of a precept to be issued by the inspectors for the arrest and detention, until the canvass of the votes, of any individual who is guilty of disorderly conduct in the presence or hearing of the inspectors.

The people of the State of New-York to the sheriff of the city and county of _____, and to any constable of said county : Whereas, at the present annual election held in and for election district number _____ in the town of _____, (*or, in the ward of the city of _____,*) in said county, C. D., in the presence (*or, in the hearing*) of us the undersigned inspectors of the said election did, by disorderly conduct, to wit: (*by loud and boisterous noises, or, by violent stamping, or, by assaulting R. S., and divers others, or, by commencing a riot or, an affray with divers persons, as the case may be,*) interrupt and disturb the proceedings of us the said inspectors in conducting the said election; you are therefore hereby ordered forthwith to arrest the said C. D., and him safely detain in custody until the final canvass of the votes given in this election district shall be completed.

Given under our hands and seals this _____ day of _____, 18 .

[This should be signed by at least a majority of the inspectors.]

[No. 196.]

Form of a precept for the arrest and detention of any person who "shall refuse to obey the lawful commands of the inspectors."

The people of the State of New-York to the sheriff of the (city and) county of , and to any constable of said county :

Whereas, at the present annual election held in and for the election district composed of the town of (or, of the ward of the city of) in said county, C. D., did wilfully and intentionally obstruct the passage way to the poll of the said election, thereby hindering and preventing free access to the said poll in open and known violation of the command of us the undersigned inspectors of this election, previously and publicly given in his hearing; you are therefore hereby ordered forthwith to arrest the said C. D., and him safely keep and detain in custody until the final canvass of the votes given in this election district shall be completed.

Given under our hands and seals this day of , 18 .

[To be signed by a majority of the inspectors.]

[No. 197.]

Form of the poll lists to be kept by the clerks of the election.

Names of Voters.		State box.	Judiciary box.	Assembly box.
L. M.	A. B.	1		
P. O.	C. D.	1		
G. O.	E. F.	1		
B. O.	G. H.	1		

[No. 198.]

Form of the minute or statement of persons challenged, to each of whom is administered the oath or oaths required by law.

At the general election, held in election district number three, in the town of (or, in the ward of the city of), in the county of , on the day of , 18 , the following persons were challenged, and respectively took the oath, or oaths, as stated below, to wit :

O. P., Q. R., and S. T., each took the preliminary oath, whereupon the challenge was in each case withdrawn.

H. G., E. F. and X. Y., each took the preliminary, and also the general oath, (*or, affirmation, as the case may be.*)

We certify that the above is a true minute and statement of the persons challenged, who took either or both of the oaths or affirmations required by law.

Dated , 18 .

A. B., }
C. D., } *Inspectors.*
E. F., }

[No. 199.]

Certificate of canvass of votes for electors of president and vice president.

We, the undersigned, composing the board of inspectors of election in and for the election district of the town of , (*or, of the ward of the city of*) in the county of , do certify that the following is a correct statement of the votes given for electors of president and vice president at a general election held in said district on the day of November, one thousand eight hundred and , viz :

That the whole number of votes given in said district for the office of electors of president and vice president was eighteen thousand five hundred and forty ; of which J. D. received five hundred and fifteen ; P. B. received five hundred and forty, &c.

Dated 18 .

A. W., }
L. R., } *Inspectors of*
M. N., } *Election.*

[No. 200.]

Certificate of canvass for governor.

We, the board of inspectors of election, in and for the election district of the town of (*or, of the ward of the city of*) in the county of , do certify that the following is a correct statement of the result of a general election held in said district, on the day of November, one thousand eight hundred and , viz :

That the whole number of votes given for the office of governor, was four hundred and fifty ; of which J. D. received two hundred and ten ; B. T. received one hundred and twenty ; I. J. received

ninety; C. P. received seventeen; A. D. received eleven; P. H. received one, and J. G. received one.

Dated _____, in the year 18 ____.

A. B., }
C. D., } *Inspectors of*
E. F., } *Election.*

[No. 201.]

Certificate of canvass of votes for judicial officers.

We, the undersigned, composing the board of inspectors of election in and for the _____ election district of the town of _____

(or, of the _____ ward of the city of _____) in the county of _____, do certify that the following is a correct statement of the result of a general election held in said district on the _____ day of November, one thousand eight hundred and _____, (or, at the election held in said district on the seventh day of June, one thousand eight hundred _____,) viz:

That the whole number of votes given in the said district for the office of judge of the court of appeals, was six thousand and forty-four; of which L. M., received eight hundred and twenty-two; J. S., received eight hundred and thirty, (&c., &c., proceeding through the whole list of officers and names voted for.)

That the number of votes given in said district for the office of justice of the supreme court, was six thousand and thirty-five; of which W. D. received nine hundred and fifty-three; N. F. received nine hundred and forty-two, (&c., as before.)

Dated, _____ in the year 18 ____.

A. B., }
C. D., } *Inspectors.*
E. T., }

[No. 202.]

Statement by the board of county canvassers.

Statement in relation to governor, lieutenant-governor, judges of the court of appeals, justices of the supreme court, clerk of the court of appeals, secretary of state, comptroller, treasurer, attorney-general, state engineer and surveyor, canal commissioners, inspectors of state prisons, senators and representatives in congress:

The board of county canvassers of the county of _____ having met at the office of the clerk of said county, on the _____ day of No-

venber, 18 , to canvass and estimate the votes given in the several election districts of said county, at the general election, held on the day of , in the year aforesaid, do certify as follows, to wit: That it appears, on such estimate and canvass, that the whole number of votes given for governor, was fifteen thousand one hundred and ten; of which P. D. received seven thousand and one; A. R., received six thousand and twelve; J. D. received one thousand two hundred and seventeen, and J. F. received eight hundred and seventy-two votes:

That the whole number of votes given for lieutenant governor, was fifteen thousand, of which, (&c., as before:)

That the whole number of votes given for senator, (or, senators, as the case may be,) was, &c.:

[If more than one judge of the court of appeals, justice of the supreme court, canal commissioner, or inspector of state prisons, is to be elected, give the number of years assigned to each candidate, as contained in the aggregate of the canvass of the several election districts.]

That the whole number of votes given for canal commissioner (or, canal commissioners, as the case may be,) was &c.

That the whole number of votes given for a representative in congress, was, &c.

Dated the day of , in the year 18 .

A. B., Chairman.

C. D., Clerk of the County and Secretary.

[No. 203.]

Statement in relation to county officers.

The statement may be in the same form as the preceding, varying only as to the description of officers in the caption or heading and then proceed as follows:

That the whole number of votes given for county judge, was, &c.

That the whole number of votes given for district attorney, &c.

That the whole number of votes given for sheriff, &c.

That the whole number of votes given for county clerk, &c.

That the whole number of votes given for coroners, &c.

[And in the city of New York.]

That the whole number of votes given for register, &c.

[No. 204.]

Certificate of the election of county officers.

The board of county canvassers of the county of having canvassed and estimated the votes given in the several election districts of the said county, at a general election, held on the day of , 18 do hereby certify, determine and declare, that J. D. by the greatest number of votes, was duly elected county judge of said county :

That P. Q., by the greatest number of votes, was duly elected district attorney of said county :

That A. S., by the greatest number of votes, was duly elected sheriff of said county :

That A. W., by the greatest number of votes, was duly elected county clerk of said county :

And that N. F., R. M. and E. R., by the greatest number of votes, were duly elected coroners of the said county.

Dated the day of November, in the year 18 .

A. B., *Chairman.*

C. D., *County Clerk and Secretary.*

[No. 205.]

Statement by board of county canvassers.

Statement in relation to members of assembly :

The board of county canvassers of the county of having met at the office of the clerk of said county on the day of November, 18 , to canvass and estimate the votes given in the several election districts in each of the assembly districts of said county, at the general election, held on the day of , in the year aforesaid, do certify as follows, to wit :

That it appears on such estimate and canvass, that the whole number of votes given for member of assembly in the first assembly district of said county, was nine thousand four hundred and fifty ; of which W. S. received four thousand and eight hundred ; E. F. received four thousand four hundred and fifty ; and J. D. received two hundred votes.

That the whole number of votes given for member of assembly in the second assembly district of said county, was nine thousand and fifteen ; of which P. N. received five thousand and ten ; G. P.

received four thousand ; J. T. received three, and R. H. received two votes.

[Proceed in this manner with the subsequent districts in the county, where there may be more than two, until the result in each assembly district is given. Where the county does not elect but one member of assembly, the statement will be varied to conform to the fact.]

[No. 206.]

Certificate of the election of members of assembly.

The board of county canvassers of the county of having canvassed and estimated the votes given in the several election districts in each of the assembly districts of the said county, at a general election held on the day of 18 , do hereby certify, determine and declare that J. S., by the greatest number of votes was duly elected member of assembly, in and for the first assembly district in said county.

That C. D., by the greatest number of votes was duly elected member of assembly in and for the second assembly district in said county.

Dated the day of November, 18

A. B., *Chairman.*

C. D., *County Clerk and Secretary.*

[No. 206, A.]

Form of notice to be published by the sheriff in the newspapers.

ELECTION NOTICE.

A general (or, special) election is to be held in the county of on the day of November next, at which will be chosen the officers mentioned in the notice from the secretary of state, (or, in the order from the board of canvassers, or, in the proclamation of the governor, *as the case may be,*) of which a copy is annexed.

Dated at this day of }
in the year 18 .

A. B., *Sheriff.*

[No. 206, B.]

Appointment of a minority inspector for each district.

We, the presiding officers of the annual town meeting held in

the town of (*or, charter election held in the city of*
) on the day of 18 , do hereby, in pursuance of
 the directions given in § 21 of title III, article third of the act en-
 titled "An act respecting elections other than for militia and town
 officers," passed April 5, 1842, appoint A. B. in district No. 1,
 C. D. in district No. 2, and E. F. in district No. 3, in said town
 (*or, in the* ward of said city) to be associated respectively
 with the two who have this day been elected for each of said dis-
 tricts, and each to be an inspector of election in and for his dis-
 trict in all elections held in said district during the present year ;
 the said A. B., C. D. and E. F., each being one of the two persons
 in the election districts respectively, who had the highest number
 of votes next to the two inspectors who were elected.

Given under our hands this }
 day of 18 . }

(*To be signed by a majority of the presiding officers.*)

[No. 206, C.]

Appointment of inspectors to supply vacancies.

A. B. is hereby appointed inspector of elections in and for dis-
 trict No. 1, in the town of to supply the vacancy oc-
 casioned by the omission to elect or appoint (*or, occasioned by the*
death, removal, or, inability to serve, as the case may be,) of C. D.,
 and E. F. is hereby appointed inspector of election in and for dis-
 trict No. 2, in said town, to supply the vacancy occasioned, &c.

Given under our hands this }
 day of 18 . }

D. E., *Supervisor.*
 R. O., *Town Clerk.*
 K. L., { *Justices of*
 H. I., { *the Peace.*
 P. R., }

[No. 206, D.]

*Appointment of an inspector or inspectors to form a board
 where a majority is not present on the day of election.*

A majority of the inspectors not being present, I hereby appoint
 A. B. (*or, A. B. and C. D.*), to officiate as inspector of election
 (*or, as inspectors of election*), until a majority of the inspectors
 shall be present.

Dated , 18 .

R. B., *Inspector of Election.*

[No. 206, E.]

Proclamation of the opening of the poll.

Hear ye, hear ye, hear ye. The poll of this election is opened, and all persons attending the same are strictly charged and commanded, by the authority and in the name of the people of this State, to keep the peace thereof during their attendance at this election, upon pain of imprisonment.

And all persons are desired to take notice, that the poll will be closed at sunset.

[No. 206, F.]

Proclamation on closing the poll.

Hear ye, hear ye, hear ye. The poll of this election is closed.

[No. 207.]

Bond or instrument in writing, to be given by a constable and his sureties.

A. B., chosen a constable in the town of _____, in the county of _____, and C. D. and E. F., as sureties, do hereby jointly and severally agree to pay to each and every person who may be entitled thereto, all such sums of money as the said constable may become liable to pay, on account of any execution which shall be delivered to him for collection.

Dated the _____ day of _____, 18 ____.

A. B.

C. D.

E. F.

Executed in the presence of L. M., supervisor of _____, (or, of N. O., town clerk of _____):

I approve the sureties named in the within instrument.

Dated the _____ day of _____, 18 ____.

L. M., Supervisor,
(or, N. O., Town Clerk.)

[This certificate of approval should be endorsed on the bond before filing it in the town clerk's office.]

[No. 208.]

Constable's return upon a summons.

The within summons personally served: (or, by leaving a copy, as the case may be.) _____, 18 ____ . Fees \$0 13.

A. B., Constable.

[No. 209.]

Bond to prevent the removal of goods attached.

Know all men by these presents, that we, I. K., and S. Q., of the town of _____, in the county of _____ are held and firmly bound unto A. B., in the sum of _____ dollars, (*insert double the sum sworn to by the plaintiff, as stated in the attachment,*) to be paid to the said A. B., or to his certain attorney, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally firmly by these presents. Sealed with our seals and dated this _____ day of _____ 18 .

Whereas, A. B., one of the constables of the county of _____, by virtue of an attachment issued by S. C., Esq., in favor of X. Y., against the above bounden I. K., has attached certain goods and chattels, to wit, (*enumerate all the articles attached:—*) Now, therefore, the condition of this obligation is such, that if the said goods and chattels, shall be produced to satisfy any execution that may be issued upon any judgment which shall be obtained by the plaintiff upon the said attachment, within six months after the date of this bond, then this obligation to be void, otherwise of force.

J. K., [L. S.]
P. Q., [L. S.]

Sealed and delivered }
in presence of }
 L. M.

[No. 210.]

Bond by claimant of property attached.

Know all men by these presents, that we, J. K., P. Q., and D. F., of the town of _____, in the county of _____, are held and firmly bound unto X. Y., in the sum of _____ dollars, (*double the value of the property attached,*) to be paid to the said X. Y., or to his certain attorney, executors, administrators or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the _____ day of _____, 18 .

Whereas certain goods and chattels, to wit: (*enumerate the articles attached,*) were on this _____ day of _____, 18 , seized

by A. B., one of the constables of the county of _____, by virtue of an attachment issued by S. C., Esq., a justice of the peace of said county, in favor of the above named X. Y., against G. H. And whereas the above bounden J. K. claims the said goods and chattels as his property :

Now, therefore, the condition of this obligation is such, that if, in a suit to be brought on this obligation within three months from the date hereof, the said J. K. shall establish that he was the owner of the said goods at the time of the said seizure ; and in case of his failure to do so, if the said J. K. shall pay the value of the said goods and chattels, with interest, then this obligation to be void, otherwise of force.

J. K., [L. S.]

P. Q., [L. S.]

D. F., [L. S.]

*Sealed and delivered in
presence of* }

L. M.

[No. 211.]

Inventory.

Copy of an inventory of property this day seized by me, by virtue of the annexed attachment, (or, by virtue of an attachment, of which the annexed is a copy :) six pigs, one cow, one table, one hoe, one spade, one axe.

, 18 .

A. B., *Constable.*

[No. 212.]

Form of return to attachment.

By virtue of the within attachment, I did, on the _____ day of _____, 18 _____, attach and take into my custody, the goods and chattels of the defendant, mentioned in the inventory, of which the annexed is a copy ; and immediately on the same day I made an inventory of the property seized, and served a copy of the within attachment and of the said inventory, duly certified by me on the defendant personally.

, 18 .

A. B., *Constable.*

[If not personally served, substitute the following in the place of latter clause of the above form :]

“ And immediately on the same day I made an inventory of the property seized, and because the defendant could not be found in the county of _____, I left a copy of the within attachment, and of the said inventory, duly certified by me, at the last place of residence of the said defendant, (or, if the defendant have no place of residence, in the county, with J. B., in whose possession I found the said goods and chattels, the defendant having no place of residence in the county of _____.)

, 18 .

A. B., Constable.”

[If a bond be given, the constable should add to his return the following clause : “ *But the said goods and chattels were delivered up to A. B., the defendant, or (J. D.,) upon receiving the bond herewith returned.*”]

[No. 213.]

Return of the venire.

By virtue of the within precept, I have personally summoned as jurors, the several persons named in the annexed list. Dated

, 18 .

A. B., Constable.

[No. 214.]

Bond of indemnity.

Know all men by these presents, that we, J. K. and P. Q. are held and firmly bound unto A. B., a constable of the county of _____, in the sum of _____ dollars, (*double the value of the goods,*) to be paid to the said A. B., or to his certain attorney, executors, administrators or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this _____ day of _____ 18 .

Whereas the said A. B. as constable as aforesaid, by virtue of a certain execution issued by S. C., Esq., one of the justices of the peace of the said county, against G. H., in favor of the said J. K., for _____ dollars, hath seized, or is about to levy the same execution upon (*insert a list of the articles*) now or lately in possession of the said G. H., with intent to sell the same, in order to satisfy the said execution : Now, therefore, the condition of this obligation is such, that if the said J. K. shall, at all times, and

forever hereafter, keep the said A. B. harmless and indemnified of, from and against all damages, costs, charges, trouble and expense, of what nature soever, which he may be put to, sustain or suffer, by reason of such levy and sale, or either, then this obligation to be void, otherwise of force.

J. K. [L. S.]
P. Q. [L. S.]

Sealed and delivered in presence of
L. M.

[No. 215.]

Notice of constable's sale.

By virtue of an execution, I have seized and taken into my custody, (*insert list of the articles levied upon,*) the goods and chattels of P. Q., which I shall expose for sale at public auction to the highest bidder, on the day of instant, at o'clock in the noon, at the house of , in .

Dated, , 18 .

A. B., *Constable.*

[No. 216.]

Return of the execution satisfied.

I have levied the within sum of the goods and chattels of the within P. Q., as I am within commanded.

Dated, 18 .

A. B., *Constable.*

[No. 217.]

Return of the execution, defendant committed.

No sufficient goods and chattels of the within P. Q. could be found whereon to levy ; I, therefore, took and conveyed his body to the common jail, as I am within commanded.

Dated, , 18 .

A. B., *Constable.*

[No. 218.]

Receipt for goods taken on execution.

Justice's Court,

O. N., }
vs. }
R. S. }

Execution issued by A. B., Esq., one of the justices of the peace of the county of , for.....\$95 00

Constable's fees for collecting, 5 00

Amount,\$100 00

By virtue of the above described execution, W. G., one of the constables of said county of _____ has levied upon the following goods and chattels, the property of the said R. S.. viz : (*state what.*)

18 .

Received of W. G., constable, as aforesaid, the goods and chattels above mentioned, which I promise to deliver to him at any time when he shall demand the same, at the dwelling house of the above defendant R. S. in the town of _____ in the said county ; or in default thereof, I do hereby agree with the said W. G., to pay him the amount of the judgment above described, together with the fees for the collection thereof, as above specified.

O. P.

[No. 219.]

Form for constable's accounts.

The County of	To W. G.	a constable,	Dr.
The People		18 .	Offence grand lar-
vs.			ceny, committed in the town of
James Jackson.		J. D.,	<i>Justice of the Peace.</i>

For arresting deft.	\$ 50
Travel 6 miles, 6c.,	36
Conveying deft. to court 1s.,	13
Travel 6 miles, 6c.,	36
Serving subp. on 6 wit. 1s.,	75
Travel 15 miles, 6c.,	90
Keeping deft. in custody on examination, *	50
Summoning jury,	50
Keeping deft. in custody on trial 1 day, *	1 00
For taking deft. on mittimus,	13
Conveying him to jail,	13
Travel 20 miles, 6c.,	1 20

* Discretionary with the board of supervisors to allow or reject.

[No. 220.]

Affidavit of correctness.

State of New-York, } ss.
county, }

A. B. of the town of _____ in said county, being duly sworn, says that the items contained in the foregoing account are correct, and that the disbursements and services charged therein, have been in fact made and rendered, and that no part thereof has been paid or satisfied. And further this deponent saith not.

A. B.

Subscribed and sworn before me }
this day of 18 . }

[No. 221.]

Form for entering judgment on failure to answer.

Court.

I. D., }
vs. } Judgment, A. D., 18 .
R. R. }

The summons with a copy of the complaint in this action having been personally served on _____ the defendant more than twenty days previous to this date, and no copy of an answer to the complaint having been served on the plaintiff's attorney as required by the summons:

Now, on motion of plaintiff's attorney, it is hereby adjudged that the plaintiff, recover of the defendant, the sum of dollars and cents, with dollars and cents, costs and disbursements, amounting in the whole to

Clerk.

[No. 222.]

Order for judgment on confession.

Supreme Court.

I. D. }
vs. }
R. R. }

On filing the within statement and confession, it is adjudged by

the court, that the plaintiff do recover against the defendant the sum of dollars with dollars and cents, costs.

Clerk.

[No. 223.]

Subpœna.

County, ss : The people of the State of New-York,
To

We command you, That laying aside all pretences and excuses whatsoever, you be and appear in your proper person, before our court of to be held at the court-house in in and for said county of , on the day of at o'clock in the noon of that day, then and there to testify the truth [L. S.] and give evidence concerning a certain prosecution—The people of the State of New-York, against for on the part of the defendant: and this you are not to omit under the penalties provided by law.

Witness, Hon. justice, at the court-house, in in the county aforesaid, the day of 18 .

Clerk.

[No. 224.]

Subpœna ticket.

County, ss : To

By virtue of a writ of subpœna, to you directed, and herewith shown, you are commanded, that laying aside all pretences and excuses whatsoever, you be and appear, in your proper person, before our court of to be held at the court-house in in and for the said county of on the day of at o'clock in the noon of that day, then and there to testify the truth and give evidence concerning a certain prosecution—the people of the State of New-York, against for on the part of the defendant : And this you are not to omit under the penalties provided by law.

Dated the day of 18 .

By the Court.

Clerk.

[No. 225.]

Form of transcript of judgment.

Names of parties against whom judgments have been obtained.	Names of parties in whose favor judgments have been obtained.	Where perfected.	Court.	Damages and costs.	When perfected.	When docketed.	Attorneys' names.	When satisfied.

Court, STATE OF NEW-YORK, }
County Clerk's Office, } ss.
18 .

I certify that the preceding is a true copy of the docket of a judgment entered in this office. And I also certify that the above judgment is satisfied by return of execution to that effect.

J. M., Clerk.

[No. 226.]

Certificate of the authenticity of acknowledgment.

STATE OF NEW-YORK, }
 County Clerk's office, } ss.

I, J. M., clerk of county, do hereby certify that J. K., whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was, at the date of said certificate, a in and for said county, and duly authorized to take the same. And further, that I am acquainted with the hand-writing of the said J. K., and verily believe the signature to the said certificate of proof or acknowledgment to be genuine.

And I further certify, that the said instrument is acknowledged and in all respects executed according to the laws of this State.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said county, this day of , 18 .

[L. S.]

J. M., Clerk.

[No. 227.]

Execution.

County, ss.

The people of the State of New-York, to the sheriff of the county of , Greeting :

Whereas, on the day of , 185 , judgment was rendered before J. F., Esq., a justice of the peace in and for county, against , defendant, in favor of , for dollars and cents, a transcript of which was filed and docketed in the clerk's office of county, on the day of , 18 .

Therefore, we command you, that of the goods and chattels of the said defendant in said county, you cause to be made the amount of the said judgment, with the interest from the day of the rendition thereof; and if sufficient goods and chattels cannot be found, that then you cause the amount of said judgment to be made of the real estate and chattels real, which the said defendant had in said county at the time of docketing the said judgment, or at any time afterwards, in whose hands soever the same may be.

And that you make due return of your proceedings therein, to the clerk of county, within sixty days from the date hereof.

Witness, J. F., Esq., judge of our county court of
county, and the seal of the said court, this day of ,
18 .

J. M., *Clerk.*

[No. 228.]

Juror's certificate.

Circuit Court and Court of Oyer and Terminer, }
Term, 18 . }

I certify, that J. S., served as a juror at said term
days. Distance traveled miles.

G. H., *Dept. Clerk.*

[No. 229.]

Declaration of intention, to file (naturalization.)

STATE OF NEW-YORK, }
County, { ss.

being duly sworn, deposes and
says, that it is bona fide his intention to become a citizen of the
United States of America, and to renounce, forever, all allegiance
and fidelity to any and every foreign prince, potentate, state or
sovereignty whatsoever, and particularly to the
whose subject he is ; and farther, that he is of the age of
years, and that the place of his nativity is

Sworn and subscribed, before me, this }
day of A. D. 18 . }

[No. 230.]

Copy to deliver.

STATE OF NEW-YORK, }
County, { ss.

being duly sworn, deposes and says,
that it is bona fide his intention to become a citizen of the United
States of America, and to renounce, forever, all allegiance and
fidelity to any and every foreign prince, potentate, state or sove-
reignty whatsoever, and particularly to the whose
subject he is ; and farther, that he is of the age of years,
and that the place of his nativity is .

Sworn and subscribed, before me, this }
day of A. D. 18 . }

[No. 231.]

*Certificate, to deliver.*STATE OF NEW-YORK, }
County, } ss.

I, the undersigned, clerk of the do hereby certify, that the above is a correct and true copy of the original declaration, on oath, of to become a citizen of the United States of America, subscribed and made, on the day therein mentioned, and on file and of record in my office, as clerk of the said court.

In testimony whereof, I have hereunto set my hand and [L.S.] affixed the seal of the said court, at the in the of this day of A. D. 18 .

[No. 232.]

*Oath of witnesses.*STATE OF NEW-YORK, }
County, } ss.

A. B., and C. D., citizens of the United States, in the county aforesaid, being severally sworn, do depose and say, that we have been acquainted with G. H., that said G. H., has resided within the United States at least five years, and within the State of New-York one year at least; that he has behaved as a man of good moral character, attached to the principles of the constitution of the United States, and well disposed to the good order and happiness of the same.

Sworn in open court, this }
day of , A. D., 18 . }

[No. 233.]

*Oath of party.*STATE OF NEW-YORK, }
County, } ss.

I, G. H., do swear, that I will support the constitution of the United States of America, and that I do absolutely and entirely renounce and abjure forever all allegiance and fidelity to every foreign power, prince, potentate, state or sovereignty whatever, and particularly to the of the of , whose subject I was : and further, that I never have borne any

hereditary title, or been of any of the degrees of the nobility of
the of .

Sworn in open court, this day }
of A. D. 18 . }

[No. 234.]

Certificate of citizenship.

UNITED STATES OF AMERICA :

STATE OF NEW-YORK, } ss.
County, }

Be it remembered that G. H., of the county of , who
hath resided within the limits and jurisdiction of the United States
for the term of five years, and within the State of New-York for
the term of one year at least, appeared in the , which
is a common law court of record, held in and for the county of
, in the State of New-York, on the day
of , in the year of our lord one thousand eight hundred
and , and having made proof to the satisfaction of the
said court, that he is a person of good moral character, attached to
the principles of the constitution of the United States, and well
disposed to the good order and happiness of the same ; and having
in the said court taken the oath prescribed by law, to support the
constitution of the United States, and did, in open court, absolute-
ly and entirely renounce and abjure all allegiance and fidelity to
every foreign prince, potentate, state or sovereignty ; and particu-
larly to of the of of whom he
was then a subject.

The said G. H., was thereupon, pursuant to the laws of
the United States in such case made and provided, admit-
ted by the said court to be, and he is accordingly to be con-
sidered a citizen of the United States.

[L. S.] Given under the seal of the said court, the day and year
first above written.

Per Curiam.

[No. 235.]

*County treasurer's account to be transmitted to the comptroller.**Account of unpaid taxes of the year 18 , on lands of non-residents in the town of , in the county of .*

No. of lot.	Name of tract or patent.	No. of acres.	Valuation.	Amount of tax, includ'g five per cent.

(Collector's affidavit.)

County, }
 Town of , } ss.

A. R., being duly sworn, says, that he is the collector of taxes for said town ; that the annexed is a true account of the taxes remaining unpaid upon the assessment roll of said town, for the year 18 ; that the sums mentioned in such account remain unpaid ; and that he has not, upon diligent inquiry, been able to discover any goods or chattels, belonging to, or in the possession of the persons charged with, or liable to pay such sums, whereon he could levy the same.

A. R., *Collector.*

Sworn and subscribed before me, }
 this day of , 18 . }

J. M., *County Treasurer.*

[In making this affidavit, the oath must be administered by the county treasurer, or in case of his absence, by a justice of the peace ; when the jurat is signed by a justice, it should show on its face that the county treasurer was absent. Sec. 10, id.

Upon the receipt of this account it is the duty of the county treasurer to compare it carefully with the original assessment roll, and annex a certificate thereto in the following form.]

(County Treasurer's certificate to correctness of collector's return.)

County, }
 Treasurer's Office. }

I hereby certify that the preceding is the account of unpaid taxes of the year 18 , delivered to me by A. R., collector of

taxes in the town of _____, in said county; and that I have examined and compared such account with the entries of the same taxes, in the original assessment roll of said town for said year, and found the same to be a true transcript from such roll.

Dated at _____, this _____ day of _____, 18____.

J. M., *County Treasurer.*

[No. 236.]

Summons for coroner's jury.

County, ss.

To any of the constables of the county of _____

By virtue of my office, I command you to summon not less than nine nor more than fifteen able and sufficient men of the county of _____, to be and appear before me on the _____ day of _____

at _____ o'clock in the _____ noon, at the house of _____

in the town of _____ in said county, then and there to do and execute all such things that shall be given them in charge on behalf of the people, touching the death of A. B., and for so doing this shall be your warrant: And that you also attend at the time and place above mentioned, to make a return of the names of the persons whom you shall have so summoned, and further to do and execute such other matters as shall be then and there enjoined upon you: and have you then and there this warrant. Given under my hand and seal this _____ day of _____ 18____.

E. S. P., *Coroner.* [L. S.]

[No. 237.]

Inquisition by drowning.

County, ss.

An inquisition taken for the people of the State of New-York, at the town of _____ in the county of _____ the _____ day of _____ in the year, &c., before G. H. one of the coroners of the said people for the said county, on view of the body of A. B., then and there lying dead, upon the oath of C. F., (*here name the jurors sworn*) good and lawful men of the said county, duly chosen, and who being then and there duly sworn, and charged to inquire for the said people, when, where, how and in what manner, the said A. B. came to his death, do upon their oath say, that the said A. B. not being of sound mind, but lunatic and distracted, on the _____ day of _____, in the year aforesaid, at the town and in the county aforesaid, to wit, into

, there did cast and throw himself, by means of which he, the said A. B. was then and there drowned, and there died. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said A. B. did drown and kill himself. In witness whereof, as well the said coroner as the jurors aforesaid, have to this inquisition set their hands and seals, on the day and year, and the place above mentioned.

G. H., *Coroner.* [L. S.]

A. B.,	} <i>Jurors.</i>	[L. S.]
C. D.,		[L. S.]
E. F., &c.		[L. S.]

[No. 238.]

Inquisition by hanging.

(*As in the former precedent to the words, upon their oath say*):
 “That the said R. F. not having the fear of God before his eyes, on the day of , in the year aforesaid, with force and arms, at the town of in the county aforesaid, in and upon himself, wilfully and of his malice aforethought, did make an assault, and did then and there hang, suffocate and strangle himself; of which said hanging, suffocation and strangling, he the said R. F. did then and there die. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said R. F., in manner and by the means aforesaid, feloniously, wilfully, and of his malice aforethought, did kill and murder himself, against the peace of the people of, &c. and their dignity. In witness, &c.”

[No. 239.]

Inquisition by poisoning.

“That the said R. F., &c., to wit: on the same day, in the same year at the town, in the county aforesaid, feloniously, wilfully, and of his malice aforethought, did take, drink, and swallow down, a poisonous substance, (*state what*) by means whereof he, the said R. F. then and there became sick and distempered in his body; and of the said poison and the said sickness and distemper thereby occasioned, from the day of in the year aforesaid, until the day of the same month in the same year, at the town and county aforesaid, he the said R. F. of the poison, sickness and distemper aforesaid, did die. And so the jurors aforesaid, &c. (*as before*). In witness, &c.”

[No. 240.]

Inquisition by cutting his throat.

"That the said R. F. not having the fear of God, &c. (*as before, until you come to the word assault.*) And that the said R. F., with a certain razor, the throat of him the said R. F. did then and there strike and cut, thereby giving himself a mortal wound, of the length of three inches and depth of one inch, of which said mortal wound he the said R. F. then and there instantly died. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said R. F. in manner and by the means aforesaid, feloniously wilfully, and of his malice aforethought, did kill and murder himself, against the peace of the people of the state of New-York and their dignity."

[No. 241.]

Inquisition by shooting.

"That the said R. F. not having, &c. (*as before, until you come to the word assault, then proceed*): And the said R. F. a certain pistol charged with gunpowder and a leaden bullet, which the said R. F. then held in his right hand, feloniously, wilfully, and of his malice aforethought, to and against the head of him the said R. F. did then and there shoot off and discharge; and that by means thereof did then and there give unto himself with the leaden bullet aforesaid, so as aforesaid discharged, one mortal wound, of the breadth of one inch, and depth of three inches; of which said mortal wound, he the said R. F. then and there instantly died. And so the jurors aforesaid, upon their oath aforesaid, do say, &c. (*as in the former.*) In witness, &c.

[No. 242.]

Warrant to bury without view.

County, ss.

To whom it may concern. Whereas I am credibly informed, that on the day of instant, A. B. died suddenly in the street, to wit, in (*name the street*) in the town of in the county of aforesaid, as supposed by a fit of apoplexy, or other sudden visitation of God; and that he came not to his death by any violent means or manner whatsoever: These are therefore to certify, that in case of the said A. B. being

a town or county charge, you may permit the body of the said A. B. to be buried; and for your so doing, this shall be your warrant. Given under my hand and seal this day of 18 .

G. F. *Coroner*. [L. S.]

[No. 243.]

Warrant to bury a suicide after inquisition.

County, ss.

To constable, &c. Whereas by an inquisition taken before me, one of the people's coroners for the county of , this day of in the year, &c., at in the county of , on view of the body of J. D., then and there lying dead: the jurors in the said inquisition named have found that the said J. D., feloniously, wilfully, killed and murdered himself. This is therefore by virtue of my office, to require you forthwith to cause the body of the said J. D. to be buried in some public highway, and thereof certify to me the place, and for your so doing this shall be your warrant. Given under my hand and seal this day of 18 .

G. F. *Coroner*. [L. S.]

[No. 244.]

Warrant to apprehend a person for murder.

County, ss :

To the constables of county, and each of them :

Whereas, by an inquisition taken before me, one of the people's coroners for the county of , this day of , at in the said county, on view of the body of G. H., then and there lying dead, one A. B., late of the town of , in the said county, stands charged with the wilful murder of the said G. H. : These are therefore by virtue of my office, in the name of the people, &c., to charge and command you, and every one of you, that you, or some one of you, without delay, do apprehend and bring before me the said coroner, or one of the people's justices of the peace for the said county, the body of the said A. B., of whom you shall have notice, that he be dealt with according to law. And for your so doing this shall be your warrant. Given under my hand and seal this day of , 18 .

G. F. *Coroner*. [L. S.]

[No. 245.]

Warrant of commitment.

County, ss :

To the constables of the county of , and each of them :

Whereas, by an inquisition taken before me, one of the people's coroners for the county of , the day and year hereunder mentioned, on view of the body of G. H., lying dead in the town of , in the county aforesaid, A. B., late of the town of , in the said county, laborer, stands charged with the wilful murder of the said G. H. These are therefore, by virtue of my office, in the name of the people, &c., to charge and command you, forthwith safely to convey the body of the said A. B., to the jail of the said county, and safely to deliver the same to the keeper of the said jail : and these are likewise, by virtue of my said office, in the name of the said people, to will and require you the said keeper to receive the body of the said A. B., into your custody, and him safely to keep in the said jail, until he shall be thence discharged by due course of law, And for your so doing this shall be your warrant. Given under my hand and seal this day of , 18 .

F. G., Coroner. [L. S.]

[No. 246.]

Form of a bond from an under-sheriff or deputy to a sheriff.

Know all men by these presents, that we, J. M. and A. R., are held and firmly bound unto C. W., Esq., sheriff of the county of , in the sum of dollars, to be paid to the said C. W., or to his successors in office, or to his certain attorney, representatives, or assigns, to which payment, well and truly to be made, we bind ourselves, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the day of , 18 .

The condition of this obligation is such, that whereas the above named J. M. is, at the special instance and request of the said obligors, appointed by him, the said C. W., his deputy-sheriff under him, the said C. W., in and for the said county of : Now, therefore, if the said J. M. shall well and faithfully, in all things, perform and execute the office of deputy-sheriff, of the said county of , during his continuance in said office, by virtue of

the said appointment, without deceit, fraud, or oppression, and shall keep and save, harmless and indemnified, the said C. W., his executors and administrators, of and from all actions, suits, trouble, costs, charges, damages, and expenses whatsoever, on account or by reason of any omission or neglect of duty of him, the said J. M., in his said office of deputy-sheriff, then this obligation shall be void and of no effect, otherwise in full force.

Signed, sealed, &c.,

J. M. [L. S.]
A. R. [L. S.]

[No. 247.]

Jailer's bond.

Know all men by these presents, that I, J. K., of _____, in the county of _____, and State of New-York, am held and firmly bound unto C. A., sheriff of the said county of _____ in the sum of one thousand dollars, of lawful money of the said state, to be paid to the said C. A., his heirs, executors, administrators or assigns; for which payment well and truly to be made, I bind myself, my heirs, executors and administrators, and each of them, firmly by these presents. Sealed with my seal, and dated this _____ day of _____ in the year, &c.

Whereas the said C. A., sheriff as aforesaid, hath appointed the said J. K., jailer of the common jail of the said county of _____ :

Now, therefore, the condition of the above obligation is such, that if the above bounden J. K., jailer as aforesaid, shall and do from time to time take and receive into his custody within the jail in the county of _____ aforesaid, all such persons and prisoners, which shall be committed and sent to the said jail, or committed to the custody of the said jailer by the said sheriff or his deputy, or by any justice or justices of the peace, or by any other having lawful authority to commit persons or prisoners to the said jail, and the said persons and prisoners so committed as aforesaid, do well and truly, duly and sufficiently, by his own proper person, or by his deputy or deputies, so keep, that the said C. A., his heirs, executors and administrators, and each of them, shall be saved harmless from all losses, penalties, amercements, and damages whatsoever, as well against the people of the said State, as also against all other person or persons of, for and concerning the custody of the said jail and prisoners; and likewise do discharge, save,

and keep harmless the said C. A., his heirs, executors and administrators, from time to time, and at all times hereafter, as well of convict persons, reprieves and felons, as of all other persons committed for any contempts, condemnations, trespasses, or misdemeanors, which may happen, or chance hereafter to be committed to the said jail for any of the said causes, during the time the said C. A., shall be sheriff of the said county; and likewise that the said J. K., or any other by his consent, privity or appointment, shall not in any wise let to bail or mainprize any prisoner or prisoners to him committed as aforesaid, not bailable by law, without the special commandment or appointment of the said sheriff; and if the said J. K., or his sufficient deputy, be ready to give his attendance upon the said sheriff, and his deputy at all times necessary and convenient, and all and every thing and things that he shall be required to do by the said sheriff or his deputy, touching or concerning the affairs or business wherewith the said sheriff is or shall be charged or employed, in or about the keeping the said jail or prison, then the above obligation to be void, otherwise to be in full force and virtue.

J. K. [L. S.]

Sealed and delivered, }
in the presence of }

[No. 248.]

Bond of indemnity to sheriff for payment of money.

Know all men by these presents, that we, A. B., and C. D., of the county of _____, are held and firmly bound unto H. D., Esq., sheriff of the said county of _____, in the penal sum of four hundred dollars, of lawful money of the State of New-York, to be paid to the said H. D., or to his heirs, executors or administrators, for which payment well and truly to be made, we bind ourselves jointly and severally, and our joint and several heirs, executors and administrators, firmly by these presents. Sealed with our seals, and dated _____ this _____ day of _____, in the year, &c.

Whereas, by virtue of an execution, issued out of the supreme court of the State of New-York, directed unto the above named sheriff, commanding him, that he should cause to be made of the goods and chattels of C. B. in his bailiwick, as well a certain debt of five hundred dollars, as also thirty dollars, for his costs and charges by him about his suit in that behalf expended. And whereas by virtue of the said execution, the said sheriff hath taken,

the goods and chattels of the said C. B., and sold the same for the sum of five hundred dollars, being the best price he could get for the same : And the above bounden A. B. hath applied to and requested of the said sheriff to pay him the monies so levied, on being properly indemnified, which the said sheriff hath agreed to do :

Now the condition of this obligation is such, that if the said A. B. and C. D., their and each of their heirs, executors and administrators, shall and do well and truly save harmless and keep indemnified him, the said sheriff, his under-sheriff, bailiffs, and officers, of, from and against all manner of action and actions, suit and suits, either at law or in equity, brought or to be brought against them or either of them, for or by reason of the levy or payment of the said sum of five hundred dollars to the above bounden A. B., and also of, from and against costs, charges, damages, and expenses they or either of them may be put to, for or on account thereof, then this obligation to be void, otherwise to be and remain in full force and virtue.

Sealed and delivered }
in the presence of }

A. B., [L. S.]
C. D., [L. S.]

[No. 249.]

Sheriff's certificate of the sale of real estate.

Supreme Court.

A. B. } I, H. D. H., sheriff of the county of _____ ,
vs. } do certify, that by virtue of an execution in the
C. D. } above cause, tested the _____ day of _____ , in
the year _____ , by which I was commanded to make of the
goods and chattels of W. X., in my bailiwick, _____ dol-
lars, which P. M. had recovered against him in the said court,
for his damages, which he had sustained as well by reason of the
not performing certain promises as for his costs and charges, and if
sufficient goods and chattels could not be found, that then I should
cause the said damages to be made of the real estate which the
said W. X. had on the _____ day of _____ , in the year
_____, or at any time afterwards, in whose hands soever the
same might be, as by the said writ of execution, reference being
thereto had, more fully appears ; I have levied on and this day
sold, at public vendue, according to the statute in such case made
and provided, to D. L., who was the highest bidder, for the

sum of dollars, which was the whole consideration, the real estate described in the annexed notice. (*Insert description.*)

And that the said sale will become absolute at the expiration of fifteen calendar months from this day, at which time the purchaser will be entitled to a conveyance pursuant to law, unless the said lands shall be redeemed or purchased from him before that time.

Given under my hand, this day of 18 .

H. D. H., *Sheriff of the county of* .

[No. 250.]

Sheriff's deed to the purchaser.

To all to whom these presents shall come: I, G. C. S., sheriff of the county of , send greeting: Whereas, by a writ of execution, issued out of the supreme court of the State of New-York, to me directed and delivered, dated the day of , in the year , I was commanded to make of the goods and chattels of W. A. R., in my bailiwick, dollars, which J. E. K. had recovered against him in the said court, for his damages, which he had sustained as well by reason of the not performing certain promises as for his costs and charges, and that if sufficient goods and chattels could not be found, that then I should cause the said damages to be made of the real estate, which the said W. A. R. had on the day of , in the year , or at any time afterwards, in whose hands soever the same might be, as by the said writ of execution, reference being thereunto had, more fully appears. And whereas, after the reception of the said writ by me, and before the day of the return thereof, I did by virtue of the same, seize and take the lands hereinafter particularly described, and have, for want of goods and chattels in my bailiwick of the said W. A. R., to satisfy the said damages, sold the said lands, as is hereinafter mentioned, at public auction, according to the statute in such case provided, to P. Q., for dollars, being the highest sum bid for the same.

And whereas, upon the said sale, I made out and subscribed duplicate certificates thereof, containing a particular description of the premises sold, the price bid for the same, the whole consideration money paid, and the time when such sale would become absolute, and the purchaser would be entitled to a conveyance pursuant to law; one of which duplicate certificates was, within ten

days after the sale of the said lands, filed in the office of the clerk of the said county of _____, and the other was delivered to the said purchaser.

And whereas the said premises, after the expiration of fifteen months from the time of the said sale, remained unredeemed, and no creditor of the said W. A. R. hath acquired the right or title of the said purchaser, according to the statute in such case made and provided : Now therefore, know ye, that I, the said G. C. S., sheriff aforesaid, by virtue of the said execution, and of the statutes in such case made and provided, in consideration of the said sum of _____, to me in hand paid by the said P. Q., the receipt whereof is hereby acknowledged, have granted, bargained and sold, and by these presents do grant and convey unto the said P. Q., and to his heirs and assigns, forever, all (*insert boundaries*), with its appurtenances, and all the estate, right, title, and interest which the said W. A. R. had in the said tract, piece, and parcel of land, on the said _____ day of _____, in the year 18____, or at any time since, or now hath : To have and to hold the said land and premises, and every part thereof, with the appurtenances, unto the said P. Q., his heirs and assigns, for ever, as fully and absolutely as I, the said G. C. S., as sheriff aforesaid, and under the authority aforesaid, might, could, or ought to sell and convey the same.

In witness whereof, I have hereto set my hand and seal, this day of _____, in the year 18____.

G. C. S. [L. S.]

Sealed and delivered in }
presence of }

[No. 251.]

Sheriff's notice of sale of real estate.

By virtue of an execution issued out of the supreme court of the State of New-York, against the goods and chattels, lands and tenements of W. L. and C. G., I have seized and taken all the right, title, and interest which C. G. had on the _____ day of _____, 18____, or which he may since have acquired of, in and to the following described premises, to wit : (*Here insert description of land.*) Which above described premises, I shall expose for sale at public

auction, as the law directs at the _____, in the village of _____,
 on _____, the _____ day of _____, at _____ o'clock, _____ of that day.

Dated _____, 18 ____.

R. H., *Sheriff*.

By J. B., *Deputy*.

[No. 252.]

Sheriff's return of service of summons and complaint.

County of _____, ss :

I, E. S., sheriff of the county of _____, hereby certify that
 on the _____ day of _____, 18 ____, at _____, in said county,
 I served upon the within named A. B., the defendant in the with-
 in entitled action, a copy of the within summons and complaint, by
 delivering the same to him in person, and leaving the same with
 him. \$ _____ fees.

E. S. *Sheriff*.

By C. D., *Deputy*.

[No. 253.]

Return of nulla bona to execution.

The within named defendant has no goods or chattels, lands or
 tenements, in my bailiwick, whereof I can cause to be made the
 money within mentioned, or any part thereof, according to the
 command of this execution.

E. S., *Sheriff*.

By C. D., *Deputy*.

[If the execution should be collected, the sheriff, under-sheriff, or
 deputy, collecting or returning the same, will endorse on the same
 the word "satisfied," and date it and sign his name.]

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ERRATA.

Page 83, bottom line; for "expediency," read "expediting."

" 223, line 17; for "officer," read "office."

" 478, line 3; for "names," read "name."

" 484, line 6; for "experiences," read "experience."

" 534, line 3; for "setting," read "sitting."

" 676, line 12; for "No. 115," read "No. 155."

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A Treatise on the Powers and Duties other than judicial, of Town and County Officers in the State of New-York, containing copious references to the Statutes, and the leading and latest Judicial Decisions; with an Appendix of Precedents designed for the use of those Officers and the Legal Profession.
By **AMOS G. HULL**, Counsellor at Law.

Extract from the Preface.

“The purpose of this work is to furnish to a large class of public officers in each town and county in the State of New-York, a concise epitome of their powers and duties (other than judicial), as the same are laid down in the voluminous and scattered statutory enactments, and numerous judicial decisions relating thereto.”

TESTIMONIALS.

OF THE PRESS, JUSTICES OF THE VARIOUS COURTS, AND DISTINGUISHED MEMBERS OF THE BAR THROUGHOUT THE STATE.

From Hon. Thomas A. Johnson and Hon. Henry Welles, Justices of the Supreme Court.

ROCHESTER, Sept. 8, 1855.

A. G. HULL, Esq.

Dear Sir: We have examined hastily, but with much interest, the proof-sheets of your forth-coming “Treatise on the Powers and Duties (other than judicial) of Town and County Officers in the State of New-York.” The plan of the work, and the arrangement of the several topics which it embraces are apt and skillful, and the directions to each class of officers, fortified as they are by references to all the decisions of our courts bearing upon the subject, evince care and research worthy of all commendation. In a work of this kind, clearness, orderly arrangement and accuracy are cardinal merits; and these, we think, you have combined in a degree

which must render it a standard work in every town and county of our State. We know of no work which is more needed than this. It will, we trust, supply a want which has long been seriously felt by all persons who are at all acquainted with the workings of that important portion of our system of government the administration of which belongs to Town and County Officers. If the work shall prove, as we trust it may, a safe, judicious and enlightened guide to that class of officers, in the discharge of their responsible and often most difficult and delicate trusts and duties, you will have rendered the State an essential and enduring service, and become, in the highest sense, its benefactor. We most cordially commend the work, not only to those officers for whose guidance it is more especially designed, but to business men generally, and to the profession, who will find it a valuable accession to their libraries.

With great respect, we remain,

Your obed't serv'ts,

T. A. JOHNSON,
HENRY WELLES.

From Hon. William F. Allen, Justice of the Supreme Court.

OSWEGO, Sept. 3, 1855.

AMOS G. HULL, Esq.

Dear Sir: A work of the character of your "Treatise on the Powers and Duties (other than judicial) of Town and County Officers," is greatly needed, not only by the officers whose duties are treated of, and for whose immediate benefit the work is designed, but also by the legal profession, whose labors will be greatly lessened by a reliable work in which the laws and legal decisions relating to the powers and duties of the municipal officers named are faithfully collated.

The plan and general outline of the book seem to be well calculated to accomplish the desired object. From the cursory examination which I have been able to give the proof-sheets submitted to me, I am happy to say that you have, in my opinion, been very successful in the execution of the work, and that it will meet the wants of the public, and I commend it to all who have occasion to become familiar with the duties of Town and County Officers in the State.

Very respectfully yours,

W. F. ALLEN.

From Hon. W. J. Bacon, Justice of the Supreme Court

UTICA, Sept. 12, 1855.

It gives me great pleasure to concur with Judge Allen, in his estimate of the value and importance of the proposed work of Mr. Hull, and from a necessarily hasty glance of the titles of the chapters, and the few pages of the proof-sheets which have been submitted to me, it seems to me the work is judiciously arranged; and the plan fully and faithfully carried out.

WM. J. BACON.

From Hon. George Humphreys, Judge, &c.

AUBURN; Sept. 8, 1855.

A. G. HULL, Esq.

My Dear Sir:—I have examined with some care the proof-sheets of your work on “The Powers and Duties of Town and County Officers (other than judicial).” With the subject matter, and general plan, I am much pleased, and believe this work to be very much needed at this time, and particularly on account of the many changes made by recent legislative enactments relating to the duties of those officers. A mere collection of the different statutes in relation to these officers would be of great public use; but you have gone far beyond this. You have gleaned in addition, from volumes of elementary works and reports, that would make a small library, general principles and adjudications as to the most difficult questions that may arise in the discharge of their official duties, and, what I would regard as a great merit, you have given such plain directions as cannot fail to be of great practical advantage. Of necessity it must become a book of extensive general reference, and I have no doubt it will save the legal profession many tedious hours of labor. I shall procure a copy for my own use, at the first opportunity.

Respectfully yours, &c.,

GEO. HUMPHREYS.

From Charles B. Sedgwick, Esq.

SYRACUSE, Aug. 29, 1855.

My Dear Sir:—I have examined the plan and general outlines of your proposed work, “A Treatise on the Powers and Duties (other than judicial) of Town and County Officers.” The neces-

sity of such a work has been long felt by the profession, and it cannot but be of great utility to the officers of whose powers and duties it treats. I am much pleased with the general plan and arrangement of the work, and so far as I can determine, the details are carried out with fulness, industry and judgment. I cannot doubt that the work, when completed, will be one of great practical value.

I am, very respectfully, your friend,

C. B. SEDGWICK.

From Daniel H. Marsh, Esq.

OSWEGO, Aug. 20, 1855.

A. G. HULL, Esq.

Dear Sir:—I have given such hasty perusal of the proof-sheets of your proposed work on "Town and County Officers and their Duties (other than judicial)," as my time would permit, and highly approve it, and the plan on which you propose to complete it.

Such a work is much needed by the class of officers to which it refers, and by the legal profession; and if you apply to the work the zeal, industry and discrimination which usually characterizes you, I doubt not but that it will be a valuable acquisition to the community, and highly remunerative to yourself.

Truly yours,

D. H. MARSH.

From Hon. Orville Robinson

OSWEGO, Sept. 3, 1855.

To A. G. HULL, Esq.

I concur with what Judge Allen says of the plan and execution of your work, and cheerfully bear testimony to the care and discrimination with which the same has been prepared. Such a work is eminently needed.

Yours truly,

O. ROBINSON.

From J. C. Churchill, Esq.

OSWEGO, Sept. 20, 1855.

A. G. HULL, Esq.

Dear Sir:—I have been highly gratified with a perusal of some of the proof-sheets of your work on "The Duties (other than judicial) of Town and County Officers."

As a member of the legal profession I have long since felt the need of such a work. You have brought to the preparation of this Treatise that skill and discrimination which will make it, in my opinion, very acceptable to the public.

Truly yours, &c.,

J. C. CHURCHILL.

NOTICES OF THE PRESS

FROM EXAMINATION OF PROOF SHEETS, IN ADVANCE OF PUBLICATION.

This is an invaluable work, it is intended not only for the legal profession but for popular use. The functions of each officer of which it treats, with the laws relating to them, and minute instructions as to the discharge of their duties, are combined with copious references to the statutes and the leading and latest judicial decisions, and an Appendix of Precedents. In this respect it is later than anything heretofore published, especial care having been taken to note the numerous changes made by recent acts.

In Blatchford's "New-York Justice," this work, and the "Clerk's Assistant," the Town Officer has a library of only three volumes that will be of more practical service to him than the ablest legal adviser, or all the tomes in the State Library. The one contains all that is needful as to duties and powers within the court; the other as to duties and powers outside the court, and the other forms for all necessary papers and documents.—*Albany Evening Journal*

It is a work that is destined to become immensely popular, and will be the means of saving a vast amount of toil, and perplexity, and trouble, that is now experienced for the want of such a guide. Mr. Hull has conferred a lasting benefit upon the public in the preparation of this work.—*Oswego Palladium*.

The author is well known in this section of the State, as a leading member of the Bar of this county. The principles set forth in this work are sound deductions from statutory law and judicial decisions. The entire Treatise shows itself as a skillfully modeled and carefully reared fabric—the legitimate result of long and toilsome research—shaped by a logical as well as legal mind. It fills a void in legal literature, and will be welcomed by the profession.

To the Town and County Officer it must become almost as essential as the certificate of his election.—*Oswego County Gazette*.

The arrangement of the work is admirable. County and Town Officers will here find clear, concise and safe guides in the discharge of their several duties. In fine, the book is just what the profession needs, what all Town and County Officers require, and what every elector should have to fit him to discharge his duties as a citizen, and to fill the responsible offices to which, at any time, he may be called.—*Times & Journal*.

We rejoice that such a work is in press and soon to appear, and we are glad that Mr. Hull has undertaken its preparation. He wields a polished and vigorous pen. The work will be in great demand, and we do not well see how a lawyer, or a County or Town Officer, can be without one. It has cost immense labor to prepare it.—*Patriot*.

